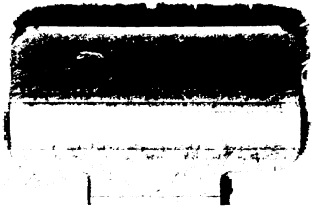

LABOR, LAW AND JUSTICE

A TREATISE ON WORKMEN'S COMPENSATION

BY

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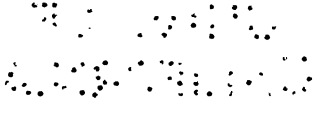

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PREFACE.

The subjects of "Employers' Liability," "Workmens' Compensation" or Justifiable Compensation to injured labor, has become today one of the foremost questions deserving accurate and unselfish consideration. Public agitation, either seeking or pretending to seek some relief for this great body of society, has engaged the attention of all of our State and Federal Legislatures in the recent past. The aim of all measures of relief so far enacted and the aim of all measures of relief proposed has seemed to me to have been based upon an immediate change in one form or another of the existing laws, rather than a relief founded upon a careful systematic and philosophical study of cause and effect.

In this work I pretend to have started from a foundation based upon equal rights and equal justice to all and from this base I pretend to have logically built a structure which, in my opinion, comprehends an equally right and just result to all interests concerned in the subject matter.

No subject of this importance can be rightly and justly legislated upon unless the purpose in mind is the duty which all men owe to all other men and by each individual to their common in-

terests. From my study of the laws passed and proposed, it has seemed to me that all legislation thus far enacted has been conceived in selfishness and the responsibility for caring for the injured workmen placed upon the first available victim, that is, Invested Capital.

In the production of this book, I have purposely avoided supporting my claims of law by an extended line of authorities; having in view at all times the intention of making a general statement which is true in the main, rather than considering the many exceptions to these main propositions by the various courts of last resort. No effort has been made to trace the accurate origin of the doctrines of law considered herein, believing that the work undertaken could be better understood, if a consideration of these doctrines was confined to a period immediately preceding the adoption of our federal constitution.

Nothing in the nature of interests affected either favorably or unfavorably, has influenced one or any of the conclusions arrived at; but a strict process of reasoning from my point of view in all the matters considered herein, has been my only guide and a truthful, right sense of common justice to all parties concerned, my sole aim.

PRENTICE CHASE,
New Haven, Conn.

January 4, 1912.

LABOR, LAW AND JUSTICE

CHAPTER I.

THE PROBLEM OF A TRUTH

"If circumstances lead me I will find
Where truth is hid, though it were hid indeed
Within the center."

—*Shakespeare.*

The rapid development of the science of government and the universal study at the present time of things pertaining to this subject makes it seem desirable that the various elements of general laws governing people should be considered separately rather than as a whole. The confusion arising out of numerous complaints against the laws in general more often than otherwise lead to no settled right conclusions, and usually result in arousing emotion hostile to a calm investigation of any of the causes inviting the complaints.

For these reasons, if for no other, the subject of this book has to do with the exposition of

one of the greatest, if not the greatest subject or doctrine of law susceptible of a separate and distinct classification, familiarly known as the law of "Master and Servant." This subject is so vast, the interests involved so great, and the number of people concerned so numerous that time and space and the pressing necessity for some comprehensive discussion of this law leaves no room or inclination to treat of any other than this one at present.

To deal with the problems which in this changing world are involved in this matter requires a discussion of natural philosophy, some history, man's habits and customs, together with a process of close reasoning and clear deductions. In seeking knowledge upon this subject, society no longer consults men who are facing backward; but are advancing those only whose lives and works place them among the class of men able to make peace with new things and new ideas. We know, and these men know, that habit and custom form a great hindrance in the path of progressive thoughts and it is not expected that any new line of thought upon this subject will escape the ever present and natural obstacles which these things offer.

"Be sure you are right and then go ahead," is a saying that is so familiar and is used so often

that no explanation is here needed to give it force. If this adage, however, is to be an undisputed guide for us to follow at all times I am inclined to believe that all efforts on our part which have a semblance of speculation in them would be killed at their birth,—thus assuring total destruction of many noble and beneficial thoughts resulting in a deplorable stand-still condition of social progress.

To avoid such a result as described, I will venture into the world of uncertainty, be my conclusion right or wrong, to sink or float as the case may be according to the judgment of the readers of this book. One thing is sure, however, and this can be said regardless of the judgment which the public may record, and that is, one has a right to think and in thinking has a right to conclude.

No apology, therefore, is offered or intended for that which may be hereinafter set forth as argument, and so far as the author's conclusions are concerned, the reader has his full permission to agree with him or not, as the case may be.

To cause organized labor to think, to cause all labor of every class to think and to cause all mankind to think, is the end in view; to expect all and every one of these classes to come to the same conclusions as the author holds, is merely a hope.

In this busy world I am fully aware of the fact that the great majority of mankind are so absorbed in their daily occupations, be they either business men or working men, that little, if any, serious thought is given to such a difficult problem as the one herein considered by them. There are a few of us, of course, who know we know it all; there are a few of us who think we know it all; and all of us feel that we know very much, and none of us feel that we are incompetent to teach the other fellow.

Truthful or not as these things may be when considered in their entiety, they are truthful when applied to specific instances in specific cases and, therefore, are more or less truths taken as a whole proposition. The fact remains, however, that the human mind is prone to travel along lines offering the least resistance; and thus, unless our thoughts are invited into familiar paths where our reasoning and conclusions find a friendly welcome, we push ahead slowly if at all. For this reason it is safe to say that no man fully thinks out all the problems of all philosophy; and it is equally as safe to say that some men think out most of the problems of some philosophy.

It is to this last named class of men that society generally applies the epithets of cranks, reformers, and progressives in political matters;

and this usually results in discouraging them from thinking along any lines looking toward social or economic betterment. The fact remains, however, that such men should be classified among the benefactors of the human race, and should be given full credit for the unselfish devotion which they show in their thankless work.

Few, if any, of these pioneers in advance thought ever reap any considerable benefit from their untiring efforts in behalf of humanity, and it is safe to say that in most instances their only aim and purpose is to lay before mankind truthful ideas and accurate processes of reasoning tending toward the ends they have in view. In other words, they believe they are right in their philosophy, right in their theory and right in their reasoning about these things and know and feel that if the matter is properly placed within reach of the public mind that serious public thought upon the subject will be the result.

They know further that to excite thought, to excite reason, is to invite the use of universal faculties and when these faculties are employed some decision is arrived at as a matter of course. Bancroft says that "universal decision is the nearest criterion of truth." In other words, when the same faculties of the human mind are employed upon the same subject matter and accurate

reason is used, the minds of many men come to the same conclusion, and this conclusion, therefore, becomes a truth. Like mathematics, truth is a thing. It stands apart from speculation. It is, and is right. It never quarrels with itself nor contradicts another thing of like kind. In social morals a truth is the common center around which all right thinking men and women revolve and is the central point out of which springs all directive energy leading toward civic betterment.

A true conclusion, therefore, by reason becomes (that which it has been in fact) an element of harmony, as distinguished from error which necessarily must be an element of discord. It would be an absurd folly to expect anything in the nature of a continuing universal judgment unless it be a right one. Men never could and never will continue forever to agree about a false theory or an absurdity.

This doctrine, truthful, however, as it may be, does not preclude the possibility, nor even the probability, of the temporary sway of a false and absurd line of social conduct. Neither does it immediately remedy the evil of a certain custom once beneficial, which under changed conditions has become an error or wrong. The first may be a condition growing out of groping minds seeking in the realms of uncertainty for a truth,

and resting temporarily upon an error. The second is a once known truth, with all the elements which constituted it as such, swept away.

Now what is a truth; what is the right thing, that is, a truthful thing, when applied and prescribed as a rule of conduct to govern the relations of men among men, and how are we to arrive at that state of satisfaction and know and feel it when we do? These are questions which this discussion as set forth naturally invites, and to answer them is the work in hand.

The knowledge of man is not only obtained through the senses of hearing, seeing, smelling, tasting and feeling, for these means of knowledge are merely putting man in touch with his objective or external world; but there is knowledge which is derived from an unexplainable source which comes to him from within himself, which for the lack of a better term we call intuitive knowledge.

To know that stone and iron are hard, is to know a truth, and we know this through the sense of feeling. To know that a blow upon the flesh causes pain, is to know another truth through the same sense. To know that sugar is sweet or that vinegar is tart, is to know other truths. To know that a thing is green or that some other thing is red, is to know other truths through the

sense of seeing, etc., etc. To know when you are doing right, to know what appeals to you to be just, to know and feel what charity means, to know and feel the reverence and love of parents and children, and to know and be certain of innumerable other recognized things, is to feel that there is within us channels of information, other than those of the five senses, which produce all of the higher and more satisfactory means of human knowledge.

It can be readily seen then, that we have not only the senses which inform us of the material external world, but we have an internal sense which places us in connection with the world of conception, reason, imagination, intelligence, and the decrees of nature. There is another man within the physical man; not in the rich and mighty only, not in those of mankind only who have been favored by wordly success. It is in man himself. It is the attribute of the human race. It is the spirit within all men which guides him to the truth, the right. It is the undeniable and gracious gift to all mankind. It is a truth of this character which will herein be discussed, and it is a truth of this kind which shall be designated hereafter as a Right, that is a Right truthful thing, a sense of justice.

CHAPTER II.

INALIENABLE RIGHTS

"All countries are a wise man's home,
And so are governments to some,
Who change them for the same intrigues
That statesmen use in breaking leagues;
While others in old faiths and troths,
Look odd, as out-of-fashion'd clothes."

—*Butler.*

The material world does not change much if any either in substance or energy. The Heavens covered with its star jetted mantle, sweeps north, east, south, and west reaching the horizon on all sides and everywhere drawing the circle of earth's covering exactly as it has been doing all the centuries. The flowers and vegetable foliage which graced the hills and meadows back in the forgotten past, now bloom in season and are a part of earth's substance as of old. The sun that warmed the lands of the Pharaohs and the moon that lighted the nights of ancient India perform these same functions for modern Earth. Nature is the same. For her no invention lightens her burdens; no new force increases her action; no new luster is generated to outshine the natural things of her past.

Gravitation compels the same obedience as ever. The whole Universe performs and perfects its revolution, and renews its seasons and cycles with a phenomenal accuracy astounding to the human intellect. All and every one of these things belonging to the material world go on and on, never changing the relations they bear to their surroundings. All work with, into, and through, and become a part of the animal life.

If a like unchanging destiny was intended to be the price paid for human existence, society would be at its starting point and the hope of social advancement a delusion. It is evident, however, that man's destiny is a thing apart from that of the substance upon which man subsists and that his status here is in process of marked and constant change.

From the beginning of time, that is if time ever had a beginning, from that age in the past of which no history records its events, the hopes, inclinations, actions, habits, customs, laws and rules of social conduct governing mankind have been undergoing constant change. No definite prescribed rule, either natural or arbitrary, regulating the affairs of man in his relations with his fellow beings, or in his relations with the earth's substance, ever did, can or will remain permanent.

Nothing could be more unnatural than a rule of action growing out of natural things of today

remaining a natural thing later on. For these reasons the restless spirit of man has been the direct cause for all internal changes in governments and has been the sole cause of all changes in the form of governments themselves. Rules of law prescribing the powers and prerogatives of a sovereign nation and the rules of law prescribing human conduct in its relations with these sovereign powers all have felt with equal force this irresistable onward trend of one of nature's mighty elements. No law yet devised has withstood its conquering advancement, and no law made by man can ever be expected to. The right thing, a truth, so long as it remains such, is the only hope upon which a permanent condition can be expected to exist.

Internal changes in matters of governments are natural, necessary and undeniable. A stand-still condition of human society is not only foreign to the Creator's will, but inhuman and unpardonable. It never has been a fact; it never will be.

Changes in the form of government, however, are not necessarily a natural desire of society, but largely and usually these things are brought about by the grasping and selfish aims of certain classes through legal though oftime immoral processes detrimental to the welfare of the many. When a condition of this character becomes a

fact, avarice prompts many unnatural acts and omissions on the part of the ruling classes, and anger, hate and destructive inclinations possess the unfavored many, usually resulting in destruction of men, property and government.

Great calamities of this character may be claimed to be natural because they have often occurred, but in no instance has history recorded one which could not have been averted had right, truth, and reason been followed as a guide.

Louis, the Sixteenth might have saved his head and his crown had he seen and followed the right, and a like result might have saved Charles the First from the holy wrath of Cromwell. A grasping after unnatural power and pursuing a course of government unholy and wrong led to the death of these two arrogant monarchs, and by the hands of the mighty many the grim reaper mowed down their lives and prerogatives, seeking just plain common justice.

Woe has been the trailing nightmare following in the wake of every unconscionable policy persisted in by governments of history. Blood, death and destruction will be the harvest for every nation which follows a like course hereafter. Every great wrong persistently forced upon men by men must ultimately be righted, and in the righting there is grave danger that a greater wrong may

be the natural weapon to bring about this result.

The afflicted modern Lazarus may be found in the flesh; but the humble and humiliating Lazarus in spirit has ceased to be. The crumbs of the rich no longer satisfy the common sense idea of Justice, neither do they establish the meaning of equal rights as it is understood by modern society.

The common mind of today searches into the subtle nature of things. Men no longer take for granted that whatever is, is right. They strive for the truth rather than accept an opinion reposing upon indolent assumption. At no time in all history has mankind been more diligently seeking knowledge and at no time has the correct legal management of government affairs been so plainly seen by the masses, and so persistently sought after.

The present day man is not the product of his times. He has made and is making the times himself. He knows what he wants, and he knows how to get it. He knows, what is more than this, that the things wanted are right and ultimately must be obtained. Constitutions of Sovereign States, the Constitution of the Federal government and the Common Law which became a part of the law of the land at the time these various Constitutions were promulgated, in many respects

now stand as a barrier to social advancement. Many needed and very apparent reforms cry out to heaven for legalized public recognition, only to be thrust aside on the plea that precedents of Common Law and the Constitution prohibit.

Since writing the above my attention has been called to the following which pleases me as being corroborative of what is herein written:

"A recent decision of the Wisconsin Supreme Court, affirming the constitutionality of a workmen's compensation act, is declared by a very respectable economic authority to be the 'most notable decision ever handed down by an American court.' The notable fact about this decision is that it takes distinct cognizance of sound economic principles, and declares that, in the absence of express constitutional words to the contrary, such principles must be regarded as a part of the Constitution.

The point is that mere vague and general language in the Constitution, or theories 'drawn from the four corners of the instrument,' however strongly fortified by precedent, must not be allowed to contradict the demands of modern economic conditions or permitted to stay the march of civilization."

In the text of this epoch-making Wisconsin decision Chief Justice Winslow writes these mem-

orable words: "When an eighteenth century constitution forms the charter of liberty for a twentieth century government, must its general provisions be construed and interpreted by an eighteenth century mind, surrounded by eighteenth century conditions and ideals? Certainly not. This were to command the race to halt in its progress—to stretch the State upon a veritable bed of Procrustes."

Commenting upon a recent decision of precisely opposite tenor, made by the highest court in the State of New York, the Supreme Court of Kansas said: "With the utmost respect to the very learned Court of Appeals of New York, it is submitted that such rulings simply fritter away serious efforts on the part of the Legislature."

"Thus in Kansas and Wisconsin it is made plain that high courts of law are awaking to a great truth—a truth so great and imperative that it cannot much longer be obscured in any quarter, to wit: That an advancing civilization has its own intrinsic and self-vindicating laws, laws written in the nature of man and in the nature of things, and that these laws, being a part of the Constitution of the Universe, cannot with impunity be excluded from the Constitution of free States."

How much longer can these worn out old dusty instruments be dragged from the archives of an-

tiquity, and flouted in our faces as an argument apparently, yet used for no other purpose than to furnish a cloak behind which criminal bribery stalks as a damnable weapon of the selfish debauchers of government. We have the same right today to consult and provide for our happiness as the framers of our Constitutions had to promote theirs. If the law governing them before American independence became a fact, excited in them such a lack of reverence as to result in the war of 1776-1783, we cannot stand self-condemned if we by peaceful methods band together to right wrongs more intolerable. Our ancestors did not contract for us an obedience to their laws when applied to conditions by them unseen; neither did they plant the seeds of their idea of just Government in our souls expecting a submissive product as their posterity.

They expected that we would inherit from them a disposition to right every wrong and to do it peacefully, if possible, but most surely to do it. They formulated for us a Government which in a measure was a composite of all republican forms of government theretofore existing. From the Swiss Confederation and from the United Netherlands came the suggestion of constructing a Federal Government out of the sovereign states then forming their own Revolutionary Congress.

Most of the constructive material, however, entering into the present government of the United States as embodied in our Constitution, and nearly, if not all of the laws regulating the relations of the citizens with each other, with the individual states, and the Federal government, which is known as the Common Law of the land, was really hewn from British precedents with their colonial reproductions and the customs and common laws brought from the Mother Country and adopted among the colonists so far as they were applicable to our national intentions.

They intended to, and believed that they had, formed the basis of a permanent government, and at the same time they provided the machinery and rules of law to manage and run such a government for the time being only. We know they did not provide all the machinery, nor all the rules which they then thought might be necessary later on, because many new rules and many new methods were provided for which since then have been added to those which the founders of the government made.

In our opinion, they did not intend that the construction which they then placed upon the enumerated purposes of the government should be the same construction for all times. It is more reasonable to presume they intended their pos-

terity to place such a construction upon the enumerated purposes of the government as would be consistent and in keeping with the times. New rules of procedure and new machinery to carry out those new rules must have been contemplated by them.

Whether this conclusion is right or wrong, the fact remains that new rules and new procedure should be placed in operation by us and our government and all of the rules of law under which it operates, should keep pace with the social life of our citizens and the government itself, kept consistent with the modern requirements of society.

Modern Government should be a machine which society as a whole should create and afterwards use to perform certain general duties required by a people of such a character that without this agency these duties would be neglected.

As the created is never greater than its creator, such a government should be the agent of society not the master. Its prerogatives should be directive duties not licensed powers. At no time should it assume to have sovereignty and at no time should society presume that it has. Such necessary powers as its duties require, either expressed or implied, should be its limitations and the very idea of its initiative sovereignty discarded as ancient doctrine.

Its development should be sanctioned by public opinion and not rise from authority of its own making. A government of Justice, therefore, should be founded upon mind, not wealth, not brute force, but should rest upon the moral intelligence of the community. Its basic principle should be the public and private happiness of all society, and all of its directive duties should be framed for this purpose.

If the basic principle of government is to be as above mentioned, the public and private happiness of today should be the end desired, rather than that which was or might have been desired in the past. It does not now concern us, whether ancient society found happiness under kingdoms and empires, or whether this idea ever entered into these classes of governments or not. Neither does it concern us now whether our forefathers found happiness in the government they created under which we now subsist. The fact remains that times have changed. Customs are new. The daily relations which we bear to our environments now were not dreamed of 130 years ago, and the cause of their then happiness is now the cause of our irritation.

The old system of government promulgated, and the rules of social conduct enacted then, doubtless suited the customs, habits and ideas of

the days when they were adopted—but they have become so age-eaten and antiquated that most of them invite forced obedience at the best, and are more frequently broken than respected now.

We may admire the historical reputation of the founders of kingdoms, and may honor Hamilton and his co-patriots for their improvements upon this class of government, but we now owe no reverence to any of their misfitting rules of human conduct as applied to present conditions, and are conscientiously justified in our adverse proclamations. Hobbs, Harrington, Sydney and Somers may have been great Statesmen in their day, but their greatness rests upon their true understanding of the human desires of their time, and the applications of sound reasoning looking toward laws tending to blend contemporaneous habits and customs into social rules of actions. Were they alive today they might read our desires aright, recommend a better form of government for us, and provide the necessary machinery to make it effective. It is inconceivable, however, that their work would result in anything like what it was, or anything like what our government is today.

There is no treasonable intention to be inferred from this implied criticism; neither will there be any intention of such a character in what is to

be said hereafter. Plain common reasoning and common sense distates that the rules of no government either modern or ancient should be respected with a reverence or adoration in all of their details unless human conscient invites such a judgment. Even the Prophets and Ancient Jews were not absolutely passive in their obedience to rules of government. Resisting, ignoring or obeying under duress if at all the rules of government is allowed by many examples in Scripture, by all nations, and by undeniable human common sense.

In this enlightened age when human intellect is a composite of the customs, habits and conclusions of advanced judgment of men of all times and places, it is natural to expect that we have learned that a free people will pay obedience to such laws only as is approved by conscience, and meets with the universal opinion as expressed by the moral sentiment of a society resulting in political justice.

CHAPTER III.

COLONIAL CONDITIONS

"We do not serve the dead—the past is past!
God lives, and lifts his glorious mornings up
Before the eyes of men, awake at last,
Who put away the meats they used to sup."

—*Mrs. Browning.*

For a proper consideration of the subject under discussion and for the purpose of arriving at the logical conclusion claimed to be the result of this work, search for material must be directed backward toward the veiled days of our ancestors and a study be made of the social environments of their daily lives. Their desires, their habits of life, their sense of justice and the processes of their reasoning all necessarily must contribute to a great extent in the work undertaken.

In discussing these matters, however, there is to be no effort made to criticise that which they considered right under the then surrounding circumstances, but these things are used only for the purposes of proving their wisdom and sense of Justice, and the lack of both in modern society.

Our forefathers, that is, all of those people who made up the controlling classes of the col-

onies prior to the first war with England, were, as a whole, men absolutely unacquainted with the conditions of today and consequently could not have had in mind a rule of law governing the relations between master and servant except such a rule as that which grew out of the customs and conditions in vogue at that time. It would be abject folly to presume that were they alive today, the law which they then adopted would still be the law of their choice. Why should it? Almost every method and means of obtaining a livlihood by the working classes have so far changed that the patriot of 1776, were he to be taken from his grave and set among us, would rush back to his silent tomb as a precaution of personal safety.

The land, water and sky doubtless would appear familiar to him, but in almost every other respect his memory would have no record of the things that are, and to him the whole universe would be such a stranger that his ancient taught intellect would utterly fail to absorb its meaning.

Instead of the pond, dam and grist mill, and the flour which these things then produced, carloads and cargoes of flour made elsewhere would meet his gaze at every turn. The sole and only iron working blacksmith shop would be supplanted by the great steel and iron working plant em-

ploying tens of thousands of men instead of the smithy and his helper. The shoemaker, his bench, lasts and hand tools, he would find mostly a thing of the past; while Lynn, Brockton and much of New England would have to satisfy his sentiment for his little old village cobbler. The homespun and home-made garb of his old time neighbors, like the neighbors themselves, would have met that silent decay of all earthly things, and great mills now clattering out the noises of cloth making would drive his past tuned quiet brain into a fearful state of intolerable confusion. In the old fashioned farm house the wheel and the hand loom might hold out a solace to his befuddled mind, but even these things he would soon learn were merely monuments of his own day folly.

Matches, candles, lamps, gas and electric lights to him would be unfamiliar, while the cook stove, the heater and all other modern appliances of home comfort would not in the least satisfy his longing for the old brick oven and the fire place near by its side. Modern ploughs, rakes, mowing machines and innumerable other invented farming tools would be so many puzzles to him. Almost every conceivable specie of movable personal property, be it in doors or out, of which he in his day knew, would now be a part of the

decayed past and the new things of today would surely shock his sense of the fitness of these things and drive him back in search of the silent companions of his former life.

The saddled horse or the horse saddled with a cart, furnished the sole means of inland travel at that time and the home circle was encompassed in the small radius co-extensive with the daily durability of this noble animal.

Under these limited environments, the lives of our forefathers were necessarily confined to an atmosphere of love and friendship growing out of their daily intercourse with their own family and the neighbors of their village life.

The farm and its daily influences, the village cobbler and the village blacksmith, the grist mill, sawmill and now and then a small trader constituted substantially all of the occupations in which labor earned its livlihood. The blacksmith and his helper, the cobbler and his assistant, the carpenter and his apprentice, the grist mill with its tender and the farm with its help were then the employees. The owners or managers of these few restricted industries were mostly of that class today designated as employers of labor.

Religion flourished and virtuous sentiment predominated their whole social life. All were acquainted; nearly all were friends. Restless

longing for something better never invited among these people the sentiment of avarice. Each had most of life's harmless pleasures; few were distressed. All their aims and ambitions were in keeping with their surroundings and the purpose of their life was an honest square deal for all.

The expected natural acts of men were acts of honesty. The odd and unusual acts of men were acts of dishonesty. These latter were noticeable and invited comment. The former were usual and conformed to the moral atmosphere of the times and were consistent with the whole intent and purpose of their life. This condition, though to us now strange and fanciful, was undeniably as true as the opposite condition is today; and just so long as the old environments lasted, just so long their influences moulded the moral rules of human conduct.

The rich in every city and town had become so only after a long life of systematic, intelligent energy and honest methods were universally known to be the price paid for this advantage. Not a dollar of these small fortunes thus obtained had the blood marks of modern wealth. Admiration and respect for these men, instead of present day contempt for the rich was rightly accorded to them. It was this class that filled the positions of trust, and modern political scandals were un-

heard of. Up toward these men boyhood eyes were turned and their conduct and method of life guided most all young manhood toward the then ideal man. These things are now all of the past, and of course do not fit with the things that are.

The territory that constituted the supposed actual public lands of the United States at that time had as its western boundary line some place unknown, but in no instance was it supposed to extend farther west than an imaginary line drawn through central New York, Pennsylvania and Virginia; and its largest towns and cities would not numerically equal many of the now known villages of New England. Schools were difficult to reach and their influences were more or less limited. Information by mail was infrequent. The daily papers of that time were of so little consequence that we have only a limited knowledge of their existence and none whatever of their influence.

By placing ourselves in a condition such as described, we can to better advantage understand the full force and meaning of the laws regulating the relations of Capital and Labor at that time, and have a clearer insight into the reasons and motives which prompted them. These men were honest toward and friendly with one

another. Their motives were pure and Christian-like. They sought not to reason in circles, nor from selfish aims. Such suggestions as were natural under the circumstances of their lives were adopted as rules of social guidance. False conduct, as well as false statements invited public censure, and the penalty for such things deserved and received universal distrust.

It was from this broad school of their lives that the earlier settlers of our colonies drew the rule of law regulating the relation between money and men.

There came a time however when these environments began to change and to these things must be charged the upper control of those baser human sentiments which this change has wrought, and at the door of these ever-changing conditions we must place the blame for that which has come to pass.

About the middle of the last century, the telegraph and railroad became a part of our social life. Homes and village environments began to extend into the land of strangers. New fields with strange and unknown properties at first attracted universal attention, quickly followed by natural covetousness. The absence of continued home and village life, of love and friendship soon developed the human characteristics of desire,

longing and avarice; and suspicion of strangers ever predominating in these rural people led quickly to cunning, falsehood, deceit and trickery.

A little later only a few years ago in fact, the telephone and the electric service doubled and trebled this class of environment. As a natural consequence, the life of society now is daily fraught with all kinds of extravagance.

Instead of the fond and loving influence of home, strangers fill our beds and love has given place to suspicion. Instead of satisfied village surroundings, a glittering and reckless life of riches fills our souls with envy. Instead of the thousand and one influences inviting goodness, we have a million and one tempting influences to be devilish. Instead of naturally acting honest in all things, we naturally act dishonest in most things. Instead of dishonesty being noticeably odd, acts of common honesty are odder still. When a public officer does a natural, common, honest official act, the whole world proclaims it from hilltops to mountains and society tags it as odd and very, very funny.

Under these circumstances it is not difficult to understand why men of capital and men of brawn have drawn apart. The master of today has but little knowledge of the men in his employment, and the glittering social pace of his

life destroys any natural inclination which he may have had to interest himself in them. Whether this be so or not, we know that the relations between money and labor at present has reached such a state of natural distrust, that the whole world trembles in anticipation of some general social conflict of far-reaching significance.

CHAPTER IV.

HAZARD OF OCCUPATION OR ASSUMED RISK

"Small habits well pursued betimes
May reach the dignity of crimes."
—*Hannah More.*

As a general proposition it is safe to say that every new idea, every new invention and every new conception in each case owes its origin in the first instance to some suggestion growing out of the things which were a part of the life of the man who originated them.

Watts conceived the power of steam from the tea kettle at his own fireside. Morse from the spark of the magnet conceived the telegraph. Newton, Bell, Edison and a thousand other great benefactors are indebted for their great names and achievements to this one little natural thing —suggestion. Without suggestion no new thing would have been created; without it, no new thing ever will be.

To the thing which this one word, (suggestion), implies, all laws ancient, medieval and modern, owe their origin. To this one thing we must give credit for the birth of our Constitutions, and to this one word are we indebted for the laws

now in force known as the law regulating the relations between man and his servants.

It does not matter to us now whether this law was in force prior to the days of Columbus; neither does it matter to us now whether this law was the law of England and the American Colonies prior to the adoption of our Federal Constitution. The fact remains that some time back in our early history as a people, the present law of master and servant was the law of the land, and its adoption at that time as a part of the Common Law of the United States must have been and was due wholly to the fact that its provisions then were consistent with the environments which suggested its adoption.

One of the provisions of this law now known and called the "hazard of occupation" or "assumed risk" is the chance which every employee or workman assumes when he takes employment for his master. To make it plainer every man who works for another must stand his own loss, if in the course of his duties he suffers an injury no matter how severe. This doctrine though now inhuman, unjust and ridiculous, at the time of its adoption as a part of the Common Law of the States was just and reasonable.

It was no hardship for a laborer to have this rule enforced against him as a blacksmith's

helper, nor as a cobbler's apprentice, neither was he wronged when this rule applied to him as a stage driver, a farm hand or a grist mill tender. When a workman of long ago engaged himself to work in these various antiquated occupations, or engaged himself as an employee in any of the occupations then known, he was in a position to protect himself first handed against any injury which he was likely to receive, and had every means at hand to avoid such an accident. Every danger naturally connected with his employment, was as well if not better known to him than it was to his employer, and an injury to him under such circumstances was a remote probability.

As a stage driver, then called a common carrier of passengers and baggage, the workman, of course, was presumed to know whether or not his horses were kind or vicious and, of course, did know. He was presumed to know whether or not his harnesses were new and strong, or old and weak. He was presumed to know whether or not the road over which he journeyed was rough, smooth or dangerous. He was presumed to know whether or not his coach was in proper condition to make the journey in safety.

As a blacksmith's helper, the workman was presumed to know and he did know whether or not the animal to be shod was vicious or kind.

He was presumed to know and did know whether or not the hammers and many other tools of this trade were properly handled, and he was presumed to know and did know every element of danger in his occupation. As a carpenter's apprentice, assisting in the erection of houses, ordinary and in keeping with the time, he was presumed to know and did know all the dangers arising from this occupation. It is inconceivable to believe that any workman or employee, while engaged in employment such as offered during any of the years prior to the nineteenth century, could have been ignorant of any of the dangers growing out of, and a necessary part of the business in which he was engaged.

It is plain then that the doctrine of "assumed risks" or the "hazard of occupation," when adopted as a rule of law, was not only just, equitable and reasonable, but it can be readily seen that it was the only natural rule of conduct which could have been applied regulating the relations between master and servant. The times, the character of the men and the character of the occupation all suggested this law; and the common risk growing out of these conditions naturally sustained it.

Going hand in hand with the law of "assumed risk" or "hazard of occupation" is a rule but little

known to the laboring classes, yet if anything it was and is more serious from the employees' standpoint at the present day, than the other. Beyond question this rule results in more injury than the other, and as a matter of common knowledge to all lawyers causes more suffering among the servant class. This rule is one which we will call "the master's duty to provide reasonable safe places for his servants to work."

This doctrine like the other also owes its origin to the same conditions as were described under the "assumed risk" theory, and had its birth at about the same period of our colonial history.

Let us see what this rule is, and how it is interpreted by our courts. Pardon is asked here for a few quotations showing how this old doctrine of law is now being applied to the new conditions.

"Every employer of labor has a right to choose the machinery and tools to be used in his business and to conduct that business in the manner most agreeable to himself. He may select his appliances, and run his mill with old or new machinery, just as he may ride in an old or new carriage, navigate an old or new vessel, or occupy an old or new house, as he pleases. The employee having knowledge of the circumstances, and entering his services for the stipulated re-

ward, can not complain of the peculiar taste and habits of his employer, nor sue him for damages sustained in and resulting from that peculiar service."

"Doubtless it is true that no man may in conducting business, unnecessarily and *wantonly* disregard the rights of other people, whether employees or strangers. An employee having knowledge can not claim indemnity except under particular circumstances. He is not secretly or involuntarily exposed, and likewise is paid for the exact position and hazard he assumes; and so he may terminate his employment, when, from unforseen perils, he finds his reward inadequate or unsatisfactory."

"The cases cited from the books are quite harmonious with the views above expressed. A defendant was sued by his servant injured by the breaking down of a van, in which he and a fellow servant were carrying goods for his master, by reason of its weakness and excessive loading. The defendant was held not to be liable. The court said that the principal was under no implied obligation to his servant for the sufficiency of the van, as he had no more knowledge of its condition than the servant himself."

A defendant, proprietor of a theatre, was sued by an actor for an injury suffered through an

insufficient lighting of the stage, and an unguarded opening in the floor, into which he fell and was injured. He did not recover in the suit, the court holding that, as he was not obliged to enter or remain in the defendant's service if he was not satisfied with the existing condition of things, he voluntarily exposed himself to the danger, of which he had the same knowledge as the defendant himself. A defendant was sued by his servant, who fell through a ladder used in a brewery. He did not succeed in his action. The servant was regarded as having the same means of knowing the character of the ladder that his master had, and as bound to judge for himself of the danger of climbing it. This is the language of Barnwell, Baron, in the Exchequer: 'I abide by the opinion I expressed in the case referred to, that a master cannot be held liable for an accident to his servant while using ordinary care in his employment, simply because the master knows that such machinery is unsafe, if the servant has the same means of knowledge as the master.'"

The cases in this country do not hold a different doctrine from those quoted, and some of them are very clear and decided in their language.

It must be evident to anyone now that the doctrine of labor's "assumed risk" would not be so

intolerable, were it not for the law above mentioned. When it is seen, however, that the one rule, bad as it is, has as its companion a worse one, the combination insults common intelligence and makes us wonder if modern conscience has become hardened with selfish modern cash.

At this point let us now consider how these two rules previously considered, work out as a modern doctrine when applied to modern places in which labor is presumed to earn its daily bread.

All modern occupations of hazard, such as electric and steam railroading, coal mining, bridge building, structural iron working, foundries, rolling mills, and thousands upon thousands of enormous institutions with their intricate and complicated machinery make a gorgeous showing in comparison with the little one horse shops of our ancestors. All of which indicate the tremendous progress made since their day looking toward social comfort. It will be seen then that everything connected with the working man has changed; or rather everything but one. The old law still stands, stands as a monument of past justice and common sense, and a modern monument of inhumanity and governmental error.

What opportunity has an employee of a railroad such as a conductor, engineer or a trainman so-called to know or to have any means of know-

ing whether or not the track over which the train is running is safe or dangerous? How can such a man be expected to know that the rail is defective, that the ties under the rails are decayed and dangerous, or that a bridge over which the train is to pass is unsafe? How is a bridge builder to know whether or not the derricks, ropes, guys and other appliances used in the construction of the bridge are safe, rusted, weakened or dangerous? How is an iron structural worker engaged upon a large modern building to know of the safety or danger of all of the elements used by his master? How is the coal miner to learn or to know whether his position underground is safe or dangerous?

This line of reasoning can be applied with equal force to any and all of the tremendous big manufacturing establishments and institutions now furnishing the greatest amount of daily support to labor.

Consider, if you will, the application of the once reasonable doctrine of "hazard of occupation" combined with the privilege which the master enjoys under the law, and state if you can wherein any reasonable application of the old law can now under the changed conditions be considered sensible. The law remains the same as it did in the days of its adoption. The "hazard

of occupation" and the reasonable safety of the environment where the occupation now takes place has entirely changed. Why not the law in the two instances previously discussed? How absurd and ridiculous it is to make any such rules as the ones in question and apply them to conditions as they now exist.

The law should be changed and, doubtless would have been long ago, had it not been for the means used on the one hand, by labor to obtain it, and the methods used on the other hand by capital, to prevent it. The discussion of these questions will be considered in later chapters.

CHAPTER V.

NEGLIGENCE OF FELLOW-SERVANT AND CONTRIBUTORY NEGLIGENCE

"To follow foolish precedents, and wink
With both our eyes, in easier than to think."
—*Cowper.*

The preceding chapter had to do with two features of the common law affecting the relations of master and his servant. It is to be understood that these rules are the ones which the employer formerly called into operation, and are the ones which he now uses as defenses when they apply in any action at law where he is called upon to defend and an injured workman is the party plaintiff in the case.

In this chapter it is intended to discuss two more rules of law affecting the relations between master and servant, and these like the two preceding ones, were formerly used and are still used by the master to defend himself against any action which may be brought against him by an injured workman. They are the doctrines now in force known as the "negligence of fellow servant," and as "contributory negligence" on the part of the injured employee.

Like the doctrine of "assumed risk" the two rules just mentioned had their origin some time back in the history of the English people and thus they also became a part of the common law of the American colonies prior to the formation of the present Federal Government. The reasons that gave birth to these two doctrines affecting capital and labor and the purpose of their adoption as a part of the common law of the colonies were the same reasons, and the same purpose as those given for the origin and the adoption of the two mentioned in Chapter four.

The farmer and his help, the blacksmith and his assistant, the cobbler and his apprentice, etc, etc., all entered into and provided the suggestions out of which these two rules of law were formulated, with just as much force as they did for the two heretofore considered. Negligence of a fellow servant in a country blacksmith shop of one hundred years ago did not threaten any appalling danger to others, neither did the probable negligence of one farm hand seriously menace the life or limbs of his fellow workman, This line of reasoning of course can be readily applied to any industry of that age, and in no given special case can we now conceive any condition at that time when negligence on the part of one workman would have resulted in serious

damage to a fellow workman employed by the same master.

At the time these rules of law were adopted, or at least when they became a part of the common law of the land, most of the industries in which the laborer earned his living employed but one workman. Very few industries of that period employed as many as five workmen who were engaged in the same general occupation. Usually where there was more than one employee, they were confined, necessarily, in a small radius and probably under the same roof at least, if not in the same room. It is safe to assume that they were acquainted with each other, familiar with each others habits and familiar with each others temperament, disposition and natural industry. It is also safe to say that any evidence of laxity on the part of any such worker would be quickly noticeable by all others, thus immediately placing all upon their guard against any injury which would be likely to occur because of the shortcomings or negligence on the part of any other employee for the time being.

In other words, if any workman of that period, employed in conjunction with his fellow servants, should be temporarily lax or negligent it would be quickly noticeable and, of course, any injury likely to occur from such a condition could be

quickly foreseen and some means taken to guard against it.

This condition necessarily was one which must have been universal at the time, as no industry of any description now known to have existed prior to the nineteenth century called for any greater number of workmen or required any different arrangements as to the conditions under which help was employed. Doubtless, these things suggested and were the cause of perpetuating the rule of common law upon this subject which is now known as negligence of fellow servant.

At this point it would seem advisable to state exactly what under this rule of common law a fellow servant was and is. As a general proposition, at common law fellow servants are those who have the same master, are engaged in the accomplishment of the same general object, are acting in one common service and deriving their compensation from the same source. This definition of what fellow servant means did not seriously affect the situation when it was originally adopted, nor when it was applied to the fellow servant in the blacksmith shop, the cobbler's shop, the grist mill or on the country farm. It was at that time a reasonable rule and if any other had been applied under the circumstances,

it would have been unjust and a great hardship upon the master of that age in his business life.

The fellow servant of another at that time did not add any great additional hazard to the 'assumed risk" of a workman's occupation; neither did it add seriously to the danger of the place or to the equipment furnished by the master. To sum the whole matter up, then, "the hazard of ones occupation or the "assumed risk" of a workman during the days of our ancestors meant the possible negligence of a fellow workman, the character of the employment and the place where his work was to be performed, and the nature of the business in which the workman was engaged. The dangers, if any, which were likely to grow out of any or all of these things the workman could see at a glance; and, therefore, the liklihood of any injury to him was so remote that the whole system of common law regulating the relations between master and servant was not only reasonable and just, but was the only practical rule that could have been adopted then in justice to the master."

Except in those states of the union where some statute law has been enacted varying or modifying the common law herein discussed, it remains in full force and effect at the present time and is supported by a long array of Supreme Court de-

cisions, and is now being employed to work untold mischief and misery and beyond any question is the greatest cause of discontent and complaint of any known rule of common law now in operation in this country.

Let us for a moment consider its application to modern conditions. If fellow servants under the rule are those who are employed by the same master, paid by the same master and performing such duties as are intended to result in the general object of the industry, railroad men from the shoveller of dirt to the book-keeper in the main office, the brakeman, the telegraph operator directing the trains, the engineers, the conductors, the water carrying boys, the depot master, the freight handlers and the pay masters, are all linked together as fellow servants regardless of the miles by which they are separated in their daily toil.

If the train despatcher in his office, directing the movement of trains, becomes negligent and mis-directs a train one or five hundred miles away from him, resulting in an injury to a brakeman or any other trainman, the plea of fellow servants would be a complete defense on the part of the railroad company if an action should be brought for damages by the injured. In other words, this once just and reasonable rule of law

has been stretched from the two workmen in a blacksmith shop working side by side, to mean two laborers working for the same company wholly unknown to each other hundreds of miles apart.

It has been applied to mean that a negligent fireman in the boiler room of a large industry, whose negligence in not keeping a boiler watered results in its bursting, is a fellow workman of upwards of one hundred laborers employed in various departments of the same industry, whose lives his negligence destroyed. This rule, of course, has been applied and is being applied to mean all laborers of every description whose work tends to the construction of large buildings from the cellar digger or the mixer of cement, to the roofer six hundred feet in the air. It has been applied and would be applied today to all laborers in the construction of our large steel bridges which span streams of commerce. It has been applied and would be applied today with hardly any exception to every industry on land or on sea. In fact, the fellow servant rule has been applied to conditions and circumstances so remote from what it originally was intended to be applied to, that logic, justice, humanity and common decency all have been disregarded and the very name "law of fellow servant" has become a stench in the nostril of civilization.

By the cases cited above it is not intended that these are the only ones where the doctrine of "negligence of fellow servants" applies. Not by any means. They are herein given only for the purposes of illustrating the rule and comprehend in themselves only a few of the many thousands of cases which might have been added to make the law upon this subject clear.

Whenever, and wherever laborers are working together for one master aiding each other in the general result of the industry and are paid by the same master, they are fellow servants and the rule applies. The workmen in cotton mills, woolen mills, rolling mills and all other mills fall within this rule, so also do the workmen in machine shops, brass shops and foundries. This is equally true of all railroads, street railroads and all other classes of institutions that carry passengers or freight. Every institution in fact where labor is employed, be it manufacturing or mercantile, be it on sea or on land, the workman in each and every one of these institutions are fellow servants of one another and this vicious rule of "negligence of fellow servants" applies in every State where the Common Law is still in force.

It requires no mental effort on the part of the simplest minded person, to conceive, under these circumstances, a case where great hardship and

rank injustice must necessarily be the result when this doctrine is applied. In a majority of the cases at the present time, when this rule is applied, it is safe to assume that the Courts themselves know and feel that a great wrong has been caused to a workman and a great injustice has been wrought as a result of the application of the doctrine. Why should this be true and what is the cause in our system of jurisprudence which makes it substantially a fact?

Contributory Negligence

"Contributory negligence," the fourth and last of the old common law defences, is if anything a source of more injustice than that due to the other three rules combined. Briefly stated, "contributory negligence" involves something which a workman does some act of his—which he should not have done at the time he did it, or in the place where he did it, resulting in, or contributing to a result that causes his own injury; or it is his failure to do something—some act which he should have done at the time when he failed to do it or in the place where he failed to do it, which resulted in or contributed to his own injury. In other words, it is doing something on the part of the laborer which a prudent man

would not have done then and there; or the not doing of something which a prudent man would then and there have done, resulting in an injury to himself.

As simple as this rule may seem, it is far from being insignificant, and under the common law practice becomes one of the greatest obstacles in the path of plain, common justice. It is the only one of the four defences employed against an injured workman which he is compelled by law to deny in his complaint that he committed, and it is the only one of the four defences mentioned wherein he has the burden of proof against him. This means in legal practice that he must allege in his cause of action a negative proposition; and, by his evidence affirmatively prove it. Putting it plainer, the injured laborer must say in his complaint that he did not cause or aid in causing his own injury; and he must prove by a preponderance of evidence at the trial that he did not cause or aid in causing the injury complained of. By compelling the injured man to allege in his writ of complaint that he did *not* cause his own injury, and by making him prove this negative fact in the first instance by his evidence, a presumption of law is raised that *he did cause* his own trouble, which presumption, he must disprove before recovery may be had.

If the doctrine of "contributory negligence" did not in itself work any great injustice, this application of the rule of presumption would more than make up the unjust feature of this rule of law. In all cases where death is the result of the injury, and a suit at law necessarily is brought by an administrator of the dead person, to prove that the dead man did not contribute to his own injury as required by the rule in most cases is an impossibility.

To illustrate:—It has been held that a man found dead at midnight under a bridge where there were no eye witnesses to the accident, unless the contrary was proven, is presumed as a matter of law to have killed himself—that is, contributed to his own death in some way unknown. Take a supposed case. Where a track workman on the railroad is found dead having been run over by a train, his administrator would be under the rule compelled to prove that he did not kill himself; which, in effect means that the law presumes that he did. Take a supposed case of an iron structural worker who might be found dead in the cellar of a building upon which he was engaged, no one having seen him fall. The rule would compel in this case his administrator to prove that he did not fall to his death through his own negligence; which, in effect, would be

that the law presumes that he did. Take a supposed case of a man found revolving around a turning shaft in a big mill, with no eye witnesses to tell how he became involved. In this instance, his administrator would have to prove that he did not get involved through his own carlessness; which, in effect, when the rule is applied, results in the presumption that he did involve himself in this horrible accident.

In other words, to sum the whole matter up, in most cases where the injury results in immediate death the requirements of this rule practically prohibit successful recovery on the part of the dead man's friends or family. To say this rule of procedure mentioned above, as applied to the doctrine of "contributory negligence" is harsh, unreasonable and unjust, is to mildly state a condition of things in our jurisprudence which deserves the most emphatic censure which can be framed in the English language. The doctrine of "contributory negligence" in itself doubtless originated practically under the same circumstances as the three other doctrines heretofore discussed, and the reason and purpose of its being adopted as a part of our common law can be readily assumed to have been the same reason and the same purpose which prompted the adoption of the other three.

It is utterly inconceivable, however, how the rule of procedure mentioned as applied to the doctrine of contributory negligence can result in right or justice to anybody. The period of its origin could not have been contemporaneous with the other three doctrines of law already discussed It is of later origin and of more doubtful legitimacy. By no process of reasoning can we now see that the application of this rule of procedure will work out anything but wrong and injustice, instead of right and justice which prompted the adoption of most of the doctrines of law now existing between money and men.

The doctrine of "contributory negligence" when it is analyzed, in nearly every instance, results in its being a composite of the doctrines of "assumed risk," "negligence of fellow servants" and the "reasonable place to work." For instance, if a man assumes the risk of his occupation, of course, if injury occurs, he contributed to his injury by not refusing to accept the hazard. If a workman assumes the hazard of his occupation and accepts employment in the place provided by his master, he again, if injured, contributes to his own injury if any occurs to him. If he assumes the risk of the negligence of his fellow servant, which afterwards results in his injury, it might be said again, that he contributes to his

own injury because he did not refuse to work in the same employment with the man whose negligence caused his injury.

It is not intended here to say that this would be the application of the doctrine of "contributory negligence" if it ever became necessary. The necessity for this rule being applied is usually dstroyed by the defenses of "assumed risk," "negligence of fellow servants" and "reasonable place to work" in themselves, without the application of the "contributory negligence" doctrine.

CHAPTER VI.

LAW OF CONTRIBUTION

"Contribution among right doers is a just duty, but should not be used as a weapon of destruction."—*Author.*

In Chapters four and five there were discussed four of the old common law rules which affect the relations between Master and Servant. They are the doctrines which have become more or less familiar to the average man and are fairly well understood in detail by the laboring classes. There is another rule of law, however, known as the law of "Contribution," which seriously affects the relations between these two interests, or at least might seriously affect the servant class should its application ever become a necessity.

Under the law of "Contribution," should the Master set it in operation in every case when it would apply, the working classes would indeed be objects of pity. As hard as their lot now appears to be; as difficult as it is and has been for them to get redress for injuries suffered under the four rules of law previously discussed, their situation, under this rule, would be so intollerable as to immediately compel some legislative action to destroy its force.

The law of "Contribution" applies where two or more persons are jointly, or jointly and severally, bound to pay a sum of money, and one or more of them pays the whole or more than his or their share, Those paying the whole amount or more than their share of the full amount, may recover from those not paying the proportion which they ought to pay.

This rule originally was applied to the obligations growing out of contracts only, and did not apply to any obligation which might arise in an action of tort, or wrong.

Going with this rule there was and is in effect a maxim of law which in fact was and is that "there can be no contribution among wrong doers." This maxim though now in full force in all joint wrongs which are *intentionally* committed by the joint tort feasors or wrongdoers, has been construed not to apply to those joint wrongs where the *intention* of the parties does not constitute a part of the offense. The rule now is to be understood according to its true meaning. When the tort or wrong, is known to be wrong, the maxim applies, but where the parties are acting under the supposition that their acts are innocent and the wrong is one of construction or inference of law, the the maxim does not apply. At present and under the modern complex environments of

society, very few joint wrongs are committed *intentionally* as compared to the joint wrongs that are committed inadvertently, accidentally and innocently. The maxim now that "there can be no contribution among wrong doers" has almost ceased to be a question worthy of consideration. It would be better if the maxim concerning this matter was to be changed about, and read, that the law of contribution applies to all joint wrongs except such as are intentionally committed. This necessarily brings the application of the law of contribution into full force and effect in all cases growing out of negligence and, therefore, applies to the laboring classes in most cases where their negligence causes a loss, or causes the master to pay a judgment of damages.

Let us see if we can make this subject clearer. The law of contribution can be used in all matters growing out of a contract where one of the contracting parties pays an obligation, and others equally with himself were bound to share in the payment. The law also applies and can be used in most wrongs growing out of some negligent act of a servant, the damage for which the master is called upon to settle. Wrongs of this character are presumed not to be *intentional.* If the master in an action at law is compelled to pay any damage resulting from such a wrong, he has

the right to set in motion the law of "Contribution" and force the person actually responsible for the injury, to pay his share or the whole of the amount required.

This law, like the doctrines previously considered, had its origin many years prior to the early days of our colonies and its adoption as a rule of law, doubtless, is due to the condition of the times, the environments and the character of the people as pointed out in the preceeding chapters.

This law, like all other rules of Common Law, was founded upon right and justice and was intended to work out no other result. It must have been plain to every one then, as it is plain to everyone now, that the force of this doctrine when applied to the condition years and years ago resulted in no immoral effect. "Contribution" between men bound by the same relations to a contract was and is, of course, just and right. There was not and there is not any hardship in a rule of law of this character.

The application of the maxim that "there can be no contribution among wrong doers" when it applied to joint wrongs intentionally committed was no hardship, because either or any of the wrong doers having *intentionally* committed a wrong and having been compelled to pay the damage could not expect the law to assist them

in collecting part of the payment out of any of their evil associates. When the law of contribution is applied to joint wrong doers whose wrongs are *unintentional,* it involves a hardship when applied to modern conditions and its application can be used as a weapon of a most appalling character.

Laborers, and the friends of Labor in the legislatures of many States, have been making, and are now making, efforts to relieve labor from some of the severe rules of common law—"Employer's Liability Bills" and "Workmen's Compensation Acts," have been passed by several States, and many more are likely to be passed of like character in the near future. These bills and acts are supposed to eliminate some of the difficulties at common law, and it is safe to say all of them are intended to bring about this result.

The Federal Government also, by acts of Congress with like good intentions has attempted and doubtless, during the present session will make further attempts to pass some legislation remedying the evils of common law pertaining to this matter. Up to the present day, however, not only the Federal but every State Legislature by every law passed, by every law attempted to be passed and by every law in contemplation of being passed affecting the relations between men and

capital, have directed their efforts along lines offering but little relief, if any, to the working classes.

The difficulty with laws passed and proposed is, they make no mention of this law of "Contribution" thus leaving it in full force in most instances. Under these circumstances, let us see how the matter will work out?

Corporations are of course, without blood, flesh, heart or intellect. Their act or omission for which an action will lie against them must necessarily be committed by some one of their agents. The law of negligence is, and it is in force today with all of its violence, that the person who does that negligently or omits to do that which he should do negligently, is responsible for the injury he causes. Therefore, when a corporation is negligent in *law* because of the negligence in *fact* of one of its agents, in order to sue it, (the Corporation,) successfully the negligence of the agent must be established as a *fact* before the negligence of the corporation can be established as a matter of law. Thus it can be seen that when a negligent act is committed for which two or more individuals or institutions are responsible, in law and fact, the liability rests upon those jointly responsible and as such, they may be sued as joint tort-fessors and jointly held responsible for the damage caused.

Under the present common law of "Contribution" among tortfessors, if one of the parties or institutions is sued alone and compelled to settle the judgment obtained, he or it has a right of action under this law against the other tortfessor to contribute either a part or the whole of the judgment to the one who had to pay, according to which of the two was the more negligent and the more responsible for the injury.

Under these circumstances, what benefit is it to labor to have the fellow-servant doctrine or the hazard of their occupation doctrine taken away from capital as a defense. Any railroad or any other corporation that is sued for the negligence of its servant, can now, under the law in operation today in every State in the Union, make the servant a co-defendant in the first instance, or can make him a defendant in an original suit under the doctrine of "Contribution" and thus force labor to sue his fellow-laborer and make his fellow-laborer pay the judgment if he has sufficient property to do so. This condition of things is not generally known and in operation, because over-looked by the legal profession in their very selfish efforts to pursue corporation, where the money is. Corporations, on the other hand, and their attorneys for various reasons too numerous to be herein discussed, do not, and

have not *dared* to put in operation these principles of law.

The result of the application of this doctrine of "Contribution," unless repealed by laws affecting labor, will leave the working classes in a position where it will not be safe for them to own any attachable property of any description in any State of the Union. Their homes, equity in their homes, deposits in Savings Banks or in any Bank, Musical instruments, stock in Building and Loan Association or corporation, valuable jewelry and many other pieces of valuable personal property will be in danger of being attached to satisfy the judgment which may be obtained under this rule of common law.

As vicious and novel as this law of "Contribution" between tortfessors may appear, it nevertheless is positively and indisputably the law of the States of the United State, of Canada and of England at the present time, and is daily set in motion by lawyers throughout the country, in cases where fear to do so does not prevent.

What earthly good will it do Labor, if the new laws passed and proposed allow them to sue the master and recover judgment for their injury, if the master in turn may sue the one causing the injury and recover as a matter of course? By this method it would be but a short period, before the

master would be holding Judgments above the heads of many of his workmen—and could enforce it at any time when the workman obtained property of any description sufficient to satisfy the same.

CHAPTER VII.

COURTS' INTERPRETATION OF LAW

"Men may construe things after their fashion,
Clean from the purpose of the things themselves."
—*Shakespeare.*

For the purpose of this book, it would seem as though the five rules of common law which have previously been considered, are sufficient to warrant a belief that the legally imposed relations between Capital and Labor are not of such a character as to invite peace and good will between these great elements of society. These doctrines of law, though seriously affecting the interests of both the master and servant in different ways, are not the only rules of law which seriously enter into, and affect the lives of the working classes. Up to the point however, where the workman becomes injured these five rules are practically the only ones which regulate his life in its relation with the employer, and are the only rules directly affecting his interest in the matter.

Before discussing the laws already passed and those proposed, I desire to briefly consider our Courts, their methods of procedure, and their processes of interpretation of the common law since

these doctrines pertaining to master and servant became the law of the land. That which may be said about our courts, however, is offered in no spirit of criticism. Any suggestions inferring new methods, or any suggestions advancing new theories, must in themselves imply some negative opposition to old methods, and because of this, criticism of what has been is unavoidable.

All common law, including of course the five doctrines affecting the interests of Capital and Labor, is presumed to be founded upon right and justice. That is, the judgment of any court which creates or sustains a common law doctrine should result in right and justice. It has been shown in the preceding chapters that when these five doctrines of law first became a part of the common law of our Colonies, their adoption as such, must necessarily have been founded upon right and justice. Had the same purpose of law been the controlling influence in later years, (as it doubtless was the controlling influence in the time of its inception,) many of the present intolerable effects of this law would have been eliminated, and many of the complaints against its mandates would not be recorded.

Courts of the present day have no reasonable excuse to disregard the purpose of a law, especially a law that was founded upon the purpose

of establishing a right and just result. On the contrary they should act as sincerely now concerning the purpose of the law, as those courts did who originally interpreted the times, and rendered judgments which made the law itself. This may appear to be a suggestion that our modern courts should undo some of the work of the courts of our forefathers. If this be true, so be it. The fact remains that we should not hesitate to have read into the judgments of our courts today, the purpose of the law with just as much force as it was read into the judgment which created the law.

I know of no law either statutory, common or Divine, which directs courts to strictly follow any one particular rule of law in arriving at a judgment, except the rule of right. If there be any, a disregard of it in order to obtain justice, would be sanctioned by universal approval, and a wrong in this case would be a right in the end.

The purpose of all law, in the first instance, is a rule of law consistent with natural law; second, it is the purpose of government; third, it is implied in the constitution of the Federal Government; fourth, it is prescribed by the constitutions of State governments; fifth, it is inferred as a part of the law of equity; and finally, the purpose of law is the highest rule of law of all laws,

and should be the controlling factor in arriving at and embodied in, all judgments.

The purpose of law, including of course all common law, is and always has been a more righteous and justifiable force as a rule, and was in the beginning and should be considered today, the uppermost feature by our courts in determining any question before them. The purpose of all law is the highest and most exalted rule of all law. The purpose of all law should be the main controlling force in the establishment of all other rules of law. The purpose of all law should be, and is presumed to be, the establishment of right and justice.

Sooner or later, all right thinking men who hope to see government operated and maintained righteously, must come to the conclusion that unless the purpose of the law is the main controlling factor entering into all legislation, and into all judgments, right and justice will be defeated, social dis-content will follow, and individual dis-respect of the law, the consequence.

Probably the most influential reason why we have so far wandered from the element of purpose in the law, is that our courts are prone to follow the rule of precedent, rather than this rule discussed.

The oath required to be taken by the courts pre-supposes an obedience to the great law of

the universe, or the natural law; it provides an obedience to the constitution of the United States; to the constitution of the State in which it is taken, and an obedience to the law of the land. Now, if the purpose of the law, is the highest and most exalted feature of the law, it is wrong to apply the rule of precedent, (a minor rule,) as the controlling force in a judgment. In other words, the purpose of the common law as a whole is a much more justifiable force, and should be so considered, in arriving at a judgment, than the application of that rule of law known as following precedent. Any court that adheres strictly to the rule of common law which prescribes a respect for the precedents of common law, and at the same time dis-regards the highest and most exalted rule of all law, which is the purpose of all law, in my opinion does not perform all the functions of its duty as required by the oath.

It is here, and here only, where much of the present difficulty between master and servant begins, and it is at this point where it should end. These old doctrines, once founded upon right and justice, were the results of the purpose of the law at that time, new doctrines should be the result of the purpose of the law today. By following the precedents of adjudicated cases under the changed conditions and circumstances as they

are, the purpose of all law has ceased to have any force and the rule of precedents goes on, like the grim reaper, working injury and destruction with justice and right forgotten.

We will endeavor to make this clearer. Let us take as an illustration the doctrine of assumed risk for instance. The "assumed risk of a workman at the time the present rule affecting this matter became a part of the law of the land, was the hazard or danger of injury which was likely to occur growing out of the inanimate things associated with him in the place of his employment. At that time the inanimate things which were a part of his daily life had no element of mystery and no element of danger in them, except such as was known to the simplest minded and most common intellect of the period.

There was no unseen danger in the blacksmith's forge, the bellows or the anvil; neither was there any great degree of hazard assumed by the workman when his occupation called him to use saws, hatchets, hammers and a few other simple devices of like character. The stage coach, with its whips and blankets, suggested no probable danger to the driver, except those well known to him and for him to assume the risks likely to arise from these things, threatened no unusual danger.

No technical knowledge was required of a workman to understand these tools of his employment and no hidden mystery entered into any element constituting the force of these inanimate things. The tremendous power of steam, understood only by technically trained men who are operating our railroads and other great industries in constant violation of the simple laws of nature, were not companions of labor at that time. Neither were the intricate and unknown forces operating our tremendous electrical institutions creatures of his "assumed risk," in his day.

These tremendous forces and thousands upon thousands of intricate and complicated invented forces, without which society at the present time could not exist, did not enter into his "assumed risk"; neither did they offer any hazard to his occupation. Practically the only hazard of a workman's occupation at that time, was the uncertainty of human physical force and a few other well known and simple dangers; and the dangers growing out of this hazard, compared with the dangers growing out of his daily life today, needs no comment.

As another illustration, let us consider the "fellow servant" doctrine. So long as the workman and his fellow servant were associated with crude

tools and primitive machinery, all the details of which were of common knowledge to both, the likelihood of a negligent act on the part of one workman was very remote. The fellow servant was at that time a workman usually engaged within sight and hearing of others and, of course, under these circumstances, the likelihood of an injury arising from the negligence of one was more often seen than not, and some steps taken to avoid it.

The duties of a fellow servant then did not require any peculiar expert knowledge of the tools and machinery for which he was employed to operate. No intricate and complicated machinery, requiring continuing perfect adjustments of its parts was likely to strain his judgment and no forces entered into his daily life which had a semblance of mystery to him. Everything which he used in his occupation was simple, and downright stupidity under these circumstances was the only danger which one servant had to fear from another.

At the present time, however, steam with its mighty forces, electricity with its mysterious and hidden powers, complicated and almost human-like machinery, all requiring a very high grade and superior knowledge to operate, suggest thousands upon thousands of opportunities for

the servant to make mistakes. It requires no stretching of the imagination to see these things in their true light and just so long as the human or man element enters into the management of modern industries of nearly every description, these dangers will exist and injuries will occur in spite of every precaution devised by man to prevent them.

So far, the illustrations used, draw a comparison between the workman and the crude tools of the eighteenth century and the modern workman with the intricate machinery at present. The whole force of these illustrations can be better seen however, if we now draw a comparison between the master and the capital which he had invested in his business in the eighteenth century, and the master or employer and the tremendous capital which he now has invested in modern enterprises.

It is taken for granted that everyone knows that few, if any, employers of labor prior to the nineteenth century had invested in any one business an amount sufficient to meet an every day modern judgment growing out of negligence cases? It is also assumed for the purposes of comparison, that it is unnecessary to state that modern industries and places where labor is employed, are not now conducted under such limited financial restrictions.

It is apparent then that when the law of "assumed risk" etc., was adopted, if an injury occurred to a workman, growing out of the then inanimate tools which he had to work with, or an injury occurred due to the negligence of a fellow servant, to deprive him of an action at law, (when we consider the ability of the master to pay a judgment,) worked no other hardship than that which justice and right demanded under the circumstances to the master.

To have created and applied a doctrine such as right and justice now demands under modern circumstances, would then have resulted in allowing the injured workman to recover a judgment sufficient to completely consume the fortune of the master, thus giving the business to the cripple and making a bankrupt out of the employer.

The difficulty with the whole problem is, that our courts have continued to apply the old definition of "assumed risk," "fellow servant" and "contributory negligence" to modern conditions without considering at all the marked changes which have taken place in the elements which constitute these terms.

Let us take for instance, the term "fellow servant." The elements which constitute the meaning of the term "fellow servant" in the past were, working for the same master, being paid by the

same master, and working to accomplish the same general result upon the same undertaking. Well and good. This, however, meant working with few associates, with crude tools, and upon a small undertaking. These were the things which were the elements entering into the definition of the term "fellow servant" then. They should be still the elements entering into the definition of the term "fellow servant" when properly used.

Working for the same master now, instead of applying to four or five men, may, and in some instances does, apply to thousands and thousands of men. Being paid by the same master now, instead of applying to four or five workmen, applies to great bodies of men in most of the modern industries. Instead of the element of assisting towards a general small result, we have now undertakings all directed by the same master of world-wide magnitude.

A servant or servants of course, pre-supposes a man or men engaged in some service for another. The word "fellow" affixed to the word "servant" at the time the term was read into the common law, meant just what the word "fellow" means today. That is, a companion, a comrade, a counterpart, an associate, a helpmate, a chum for instance. Its application implied a close relationship; nearly a physical contact.

Our courts have stretched the meaning of this word "fellow" as it applies to the word "servant" to mean anybody and everybody who works for a common master, regardless of the distance existing between the workmen, until the term "fellow servant" today practically means any servant in common, with the word "fellow" and its meaning entirely lost sight of. It is my opinion that the word "fellow" as applied to the word "servant" must have originally been read into the common law for the purpose of restricting the meaning of the word "servant"; thus making plain just what kind of a "servant" the law intended the doctrine of "fellow servant" to apply to.

If our courts had followed as a guide, the rule of right, that is, the rule of purpose, in arriving at their judgments, instead of following the minor rule of following precedents, many of the present day difficulties would have been unheard of. If the elements entering into and making up the definition of the terms "fellow servant," "assumed risk," and "contributory negligence," had never changed, there would not have been as many justifiable complaints against the application of the rule of precedent as now.

It might be said and has been said in argument, that laborers are not called upon to assume these new risks, these new elements of fellow

servant, and these new elements of contributory negligence unless they desire to. This argument does not clear up the trouble in the least. If one laborer refuses to assume the risks of his employment, all laborers may: and under this condition, Society as a whole would of course be deprived of the products of labor, and workingmen themselves would be a charge upon the community. A condition of this kind is, of course, not likely to occur and the suggestion is not made here believing any such thing will occur. It is inserted here only for the purpose of showing that right and justice cannot be obtained in this way when all parties of interest are considered.

In view of the fact that the elements entering into the definition of these doctrines of law have so far changed and in view of the fact that our courts have continued to follow the rule of precedent, as described, all these years, the whole subject has become so entangled in a mesh of uncertainty that nothing but a complete new beginning along original and carefully considered lines, can unravel our present difficulties. Any patch-work legislation such as passed and proposed, or any patch-work judgments rendered by courts will utterly fail to bring about the conditions which ought to exist between a master and his servants.

CHAPTER VIII.

COMPARISON OF PENSIONS

"'Tis not enough to help the feeble up,
But to support him after."

—*Shakespeare.*

In the preceding chapters the conception and growth of the law regulating the relations between Labor and Capital, and the interpretation placed upon these laws by our courts have all been considered. Near the beginning of Chapter Seven it was stated that "these doctrines of law . . . are not the only ones which seriously enter into and affect the lives of the working classes." As previously stated, they are substantially however, the only rules that directly affect the laborer up to the time of his injury. The rules affecting the life of a workman after an injury occurs, were purposely not considered heretofore because, it was deemed advisable that a marked distinction should be plainly drawn between such rules and the five rules which were considered in previous chapters.

In taking up this subject, we must not lose sight of the fact that there are a great many rules of law that directly and indirectly affect the

working classes, and also a great many rules of Society not here classified as rules of law, yet which nevertheless have much to do with his after life and that of his family. At first it may seem that these rules of law, and these customs of Society affecting labor, have but little if anything to do with the subject under discussion. Nothing could be farther from the truth.

If we are to fully understand and comprehend the entire meaning of a law or rule of action which will, as a result, produce justice, to an injured workman not only those rules of law which the injury itself may set in motion should be discussed, but those rules of law and those rules of society which are presumed to operate for his benefit after the injury, should be considered. These are too numerous to consider in detail and are so intricately inter-woven with the lives, not only of injured labor, but the lives of all unfortunate and non-self-supporting classes, that it is practically impossible to separate them in every instance. A few of these rules, however, are susceptible of separate discussion and apply directly to the interests of injured laborers.

Usually working men or laborers who are engaged in our most hazardous occupations, that is, occupations which are considered the most dangerous, are of that type of men we know to be

physically active, healthy and strong. In fact, it is this type of men which are sought after by the employer classes, and it is this type of men who are most competent to perform the duties required in much of our heavy and serious industrial work of today. These men usually range from twenty to forty-five years of age, thus these occupations are followed by them during that period of their lives when they are most likely to be burdened with young and numerous offsprings. Sight must not be lost of the fact also, that this type of men are healthful and vigorous and because of these reasons and because of the further reason mentioned concerning their large families, little, if any of their income is laid aside or allowed to accumulate to meet extraordinary expenses such as grow out of an injury to them.

This picture of the laboring man with but few modifications is the picture of more or less of all of the laboring world whose daily bread is earned in the occupations now considered dangerous, or those occupations which are causing the greatest number of serious accidents to the working classes. It is under these circumstances then that most of the injuries growing out of the "Hazards of occupation," "Negligence of Fellow Servants" etc., occur, and it is under these circumstances that most of the injured laborers find themselves

when an accident deprives them of the only capital which they have to sell, that is, their time and their strength.

An accident occurs. The injury, if it deprives the laborer of using his time, is serious in any event. It may be very serious, or it may result in his death. Whichever it may be, his injury causes either the loss of his time or his life, and the hardship involved begins to operate at once. Vigorous strength is changed to temporary or total incapacity. Instead of perfect health and action, he has pain and distress. Instead of an income sufficient for limited comfort and moderate necessities of life, he has nothing. Unforseen and unprovided for extra expenses quickly consume all of his savings and debts begin to accumulate. At this point not only is the laborer in physical pain and distress, but his family also begin to suffer the mental distress and physical dis-comfort which necessarily must follow.

It is here where a law founded upon right and justice should stretch out its protecting hand and give all aid possible to meet this unfortunate event in the life of a laboring man. As a matter of fact however, it is at this point, where a law founded upon right and justice, because of being tortured out of all semblance of its former self, begins to impose its inhumane force with un-

christainlike results. Instead of making immediate provisions for the care of the workman and his family, the great sovereign power of law practically strips him of every available means of redress and forces him to become a charitable object of an indifferent society. This of course, is not the result in every case where injury overtakes an employee, but this condition is the result in so many cases that a general discussion of modern methods of Charity and Charitable institutions must be considered for a proper understanding of the full need of a change in the laws under discussion.

The injured workman and his family who are finally compelled to become objects of charity are nothing more or less than God's creatures. They inherit the same right of life, liberty, sentiment, sympathy, love and affection, as those on the outside. During the days of their health they are not known to have committed any sin against God, nor any crime against the laws of man. It is safe to presume that, in most instances, they have been leading a life enviable in character and beneficial, not only to themselves, but to society generally.

Take for instance a supposed case.—A man in the strength of his manhood is working producing the necessities or comforts of life—his occu-

pation is hazardous—because of his occupation, the very young, or the enfeebled old cannot perform the duties required of him. Such a man might easily be imagined to be a Bridge Builder, Carpenter, Brick Mason, Iron Frame Worker, Railroad Builder, Ship Builder, Sailor, Railroad man, etc. Each and every one is performing a necessary duty for the wealth and comfort of society, in the first instance—each and every one, are protecting themselves and their families from becoming a charge upon society, in the second case—and each and every one are *doing more, they are creating society itself.* At the very period in their lives when they are physically capable of doing this class of work, is the very period in their life when they are, and should be, accumulating their families.

In no instance are they doing a wrong. In every respect they are doing right. An accident occurs. They become maimed and afflicted. They and theirs, become dependent, they become a charge on society and as such invite the pity and also cause the distress mentioned. Something must be done for them. They distress society if they are suffering, (and suffer they must) one of two things here occurs. That is, if unorganized society or friends, which is equally as inefficient, do not care to protect the

afflicted and his family, heartless organized society does.

The injured man has not wronged society before the injury he should not by society be wronged after the injury. His family, likewise, have not wronged society, before his affliction, neither should they, by society, be wronged, yet the contrary is frequently the result.

If the Government is morally supported in its pension system for soldiers; if it is morally supported in its pensions for many of its old employees, and if it is to be morally supported along other lines advocated, why should the Government not be supported, if the same system is advocated and applied to the honest workman?

A soldier on the field, is doing no more for the general welfare than the sailor on the sea. The carrier of mail performs no greater service than the carrier of meat. The guard at the tent is no better than the guard at the switch. The man on a horse, amusing his superior, occupies a less meritorious position than the man on the ball field, amusing the crowd. A human body protector of our Chief Executive, though clothed in the garb of blue and gilt, has no more important responsibilities to perform than the dust-stained fireman on a presidential train. The legless victim of an enemy's gun, ought not to be

rewarded any more than the surgeon that rushes to mend his wound. A carter of stone on the King's highway, deserves as much as a carter of freight on the King's elevator.

If this line of reasoning is logical, why withhold the remedy? No one, at this late day, attempts to disapprove of the Old Soldiers Pension System, in theory, even though many do disapprove of it, in some of its details.

No one disapproves of the Old Age Pension system in the Post Office Department so far as I know. The universal approbation of President's Taft's advocacy of governmental employees old age pensions, generally, throughout the country, all points to a growing desire on the part of mankind to do justice.

If the pension theory is right at all, it is wrong to apply it in fractions; if the pension theory is right at all it is wrong for any one to advocate its application in fractions; if the theory is right at all President Taft and the Law Makers of the United States are wrong in advocating it in part.

Justice to one class of deserving members of society does not right the wrong of those equally deserving. All that honestly worked for all, should at the hands of all, receive justifiable compensation for their services.

The reason for a change, as herein set out, the argument sustaining these reasons, and the part

performance of the end desired, all promise ultimate reward. The difficulty with the social change required, lies mostly in the machinery to effect this end.

It is evident that humane institutions of some kind must continue to be, and that too, at public expense. The management, however, as now in force, need not and should not longer exist.

Those of society who can find no other place of *their own* choice, in which to live, should have these places as a *home,* and it should be a home in every sense of the word. If organized society, as a whole, should distribute its offerings for the protection of all classes of people, as it now protects its soldiers and some of its government employees, most of the afflicted would find congenial and comfortable homes among their friends and relatives, with an income sufficient to meet the expense of their daily comfort. This method of protecting the deserving workman and his family, would not disintergrate home life, and all the pleasures that are akin thereto. It also, would, at the same time diminish, very materially, the necessity for large and cumbersome institutions, and thus minimize the expense for their maintainence.

By this method the unfortunate and his family would enjoy the blessings of liberty and some

of the joys of home life and would be enabled also, to pursue such avocations as they are competent to perform. This much cannot be said of the present conditions surrounding their lives.

To remedy this wrong and to obtain this desired condition, many methods have been devised, most of which have failed. The so-called "Employer's Liability Laws" for workman, by the very nature of things cannot remedy this evil nor right the wrong. This Act contemplates litigation in the outset, and promises nothing but uncertainty in its conclusion.

Society as a whole, is daily and hourly dependent upon the combined products of capital and labor for all necessities, and comforts of life. All things consumed in sustaining life, and all things enjoyed by mankind, if not products of nature, are products of men and capital. The relations between these two elements should be governed by rules so nice in their adjustment and applications, as will insure the least friction possible.

The term "Employer's Liability Act" or any other name given to a rule of law which signifies the responsibility which capital owes labor or that labor owes capital, would be a mis-named makeshift if the title embodied the sentiment of the act itself.

By rights the employer of capital should not be an insurer, neither should laborers insure them-

selves. Neither is working for the other in a broad sense. On the contrary, both are working for themselves, incidentally, and wholly, and at all times, for society. Every blow and every thought emanating from their joint efforts has as an ultimate result, the general welfare, therefore, by the general public should they be encouraged and protected to the end. Labor, when engaged, for the benefit of the whole, should not suffer as now, neither should capital suffer as proposed.

Our government now rewards its war laborer and many other of its employees with bountiful pensions—municipal associations are fast doing likewise, but in no instance are any of these benefitted, more deserving than those who perform honest duty for society, in other fields of governmental necessity.

The first class have but earned this reward by service required by society. Can less be said for the second class? The pensioners of today have only labored in the past for the common welfare, the laborers of today as well as the laborers of the past have done likewise.

One, when incapacitated, has honorable reward from society, the other when afflicted has degraded charity. One has comforts of a home of choice, the other has discomforts of a home of a semi-penal character. One lives with his wife and loved ones, the other without them.

If this satan-like inequitable and monstrous condition was the worst of this comparison we might be excused for our selfish blinded conduct, but it is not. The beginning is but in sight.

A laborer, killed in honest employment, leaves no adequate remedy at law, as it is now, by which his friends, orphans or widow can obtain redress. By working for society he places himself under the law, by which he assumes the hazzard of his occupation, but if playing or seeking pleasure this ban is removed. His widow, left with children becomes incapacitated to support herself, is rushed off to the town farm, as a semi-criminal, and her children are rushed off to a County Home. She, that never wronged society—by society is incarcerated and put at hard labor. Her innocent children that never wronged society—by society is taken from the loving care of their mother and from the sunshine of each other, given out by adoption under the law and become lost to each other. In the name of Heaven, how can this state of facts be? How can it exist? The dead did no wrong, while alive, the widow and orphans commit no sin, before or after his death, yet the most heartless punishment known to human sentiment is theirs. This cannot last; it should not.

The reason for a change of this most damnable condition of things is apparent on all sides under

our very eyes, as it were. Yet, thoughtless society has furnished no remedy, and every attempt to do so has been so bungling that the purpose sought has been slain by the crude weapons used to give it life.

Labor demands the change, but assaults capital only in its charges, and thus invites the opposition naturally to be expected. It laments with piteous appeals, and is angered by its failures. The reasons for a remedy to them is plain, but the procedure to obtain this remedy, being the product of anger ends in self destruction.

The government is, and is nothing else, but the agent of society. Society produces all comforts and necessities. Society consumes them. Society has its ills and as it is (and in the ways mentioned heretofore) provides for these difficulties. It, now by this conscience forbidden system of humane institutions, spends twice as much money to care for its unfortunate members as would provide for their wants in homes of comfort.

Money foolishly expended to maintain our courts throughout the land for this class of litigants, expenses for high paid lawyers, corporate detective bureaus, and a large proportion of the government expense of keeping alive county homes and orphan asylums, when added to the

millions of individual gifts of needed charity, would make extra taxation seem hardly necessary.

It is not my purpose to herein specify all of the details necessary to provide machinery which would affect this great social change. It is very evident that a change is needed and that some machinery be devised by which the desired results may be obtained.

CHAPTER IX.

CHARITY AS A REMEDY

"There are, while human misery abound,
A thousand ways to waste superfluous wealth,
Without one fool or flattery at your board,
Without one hour of sickness or disgust."

—*Armstrong.*

Having pointed out in previous chapters and particularly in the preceeding chapter, a few of the many hardships which the present law regulating the relations between capital and labor impose upon Labor itself, the remaining work in hand will be largely devoted to a criticism of the laws already passed to relieve the situation described, and if possible, propose such remedies as I believe should be in vogue.

The conception and the theory upon which the governments of the States of the Union and the conception and theory upon which rests the purpose of our Federal Government has always been recognized to be that which was enumciated first, and is still the doctrine of the State of Connecticut, as set forth in the first paragraph of its Constitution or Bill of Rights, which is as follows:

Our society, that is, the people has declared that "we are all equal in rights, and that no man or set of men are entitled to exclusive public emoluments or privileges from the community."

At the time this sacred compact was entered into, individuals composing society were more or less equal in their social relations, and each willingly adopted this doctrine as a matter of self protection. It was right then, it is eternally right now. Had its precepts been adhered to through thick and thin, the path leading towards its recovery would not now be blocked by modern thorns of habit, and the present agitation would not be required.

To make this compact effective, society adopted the natural method—delegated its powers and duties to a number lesser than the whole, and such a body of men we now call "government." Now government, so to speak, being merely the agent of society, pre-supposes an institution with less authority than its creator, and therefore, is not society in its entirety, neither does it always perfectly represent society in all things. A few clothed with authority often disrobe their clothiers, and fully as often disregard the clamor that naturally follows.

In this way, and for many reasons, the government sometimes makes laws not consistent with

good common judgment, and the habit of tolerance gives them a license to live. In this way we have many rights wronged, and many wrongs righted. This does not make a wronged right—right—neither does it make—a right wronged right. In both instances there is a right suppressed.

The relations between capital and labor now supported by government made law, is an illustration of a wronged right, and the treatment of our poor and afflicted is an illustration of a right-wronged. The first is a—right—of capital and labor, not allowed by law to be enjoyed, and the second is a right of labor taken away by law. One is a negative rule of law, and the other affirmative.

The negative rule contemplates the loss of health to labor without redress at law, the other contemplates the loss of liberty as a redress. Both take away from labor, neither gives. The immediate reward of the workman after injury, is a bed of sickness, his ultimate reward is a bed of pauperism.

By this method we take from society the crippled, and then take from it also, the strong to be their jailors. Thus by this process society loses both, and the crippled in body is forced to work for the crippled in conscience. Such laws, should be damned, and any society which tolerates them

can make no moral progress with such a monstrocity as its offspring.

When society, through its agents, the thirteen original Colonies, ratified the Federal Constitution by vote, it unknowingly made the first great breach in its social compact by conferring upon the national government that power which it, the National Government, has since interpreted to mean a right to grant exclusive public emoluments or privileges to a certain class of men. Of course reference is made to our Federal Pension System for Government Sailors, Soldiers and Government employees.

Having once violated this sacred compact we cannot now, right this wrong, but can, at least, make this wrong right, by destroying the exclusiveness of the gift, by making it universal, and pension all who serve society as a whole, instead of the few who serve merely the government, agent of society.

Upon this theory my previous argument has rested, and upon this "compact" rests my equitable claims for labor. A class of men now receive "exclusive public emoluments or privileges" wrongfully, and the only way to right the wrong is to make the class include all who serve the whole.

I am aware that this line of reasoning (though incontrovertible) is beset, when first compre-

hended, by two obstructions apparently impassable, yet, but little thought is required to make the path clear. The first is custom resting upon habit, the second, money resting upon thoughtlessness. The first is easily removed by forming a new habit, the second we need not disturb, except to improve the methods of obtaining and disposing of it. Society now provides for its poor and afflicted, and society pays the bill; this it always has done, and always should do. The way of doing is the thing to be changed.

If at first the income was less, and the outlay more, because of this change, philosophy should teach us that society, as well as the individual, pays the debts of licentious folly, with its income from industrious virtue. Thus, to substitute a perfect system for an imperfect one, carries with it a loss of foolish investments, as well as, at first, a part of the income. This condition, however, would not be permanent, for sooner or later the debts of folly would be liquidated, and the new system more economical than the old.

Here, then, again let me reiterate that the promise in the "compact" be performed, and give the "carter of stone on the King's highway the same as the carter of freight on the King's elevator." If society is right in giving "exclusive public emoluments or privileges" to the workmen

of "Uncle Sam" it must be right if it gives things not exclusive to workmen in its own vineyard. This means that honest labor when affected should receive the same treatment in every respect, as the soldier, including liberty at home, and all that is comprehended by our national pension system.

The so-called remedies now in force and those proposed concerning this subject, be they either masquerading under the name of "Employer Liability Acts" or "Labor Compensation Acts," do not meet the inequitable conditions. Honestly invested capital cannot and should not stand the drain of this tremendous expense, as proposed, neither should labor, as now compelled to do. Both should be absolved and this remedy discarded.

Forced employers' insurance schemes are more inefficient, if anything, than the other. By this process the burden of litigation is shifted from the employers to the employers' insurers, and the immediate and badly needed requirements of injured labor further from relief than ever. Neither remedy is right and both should be stored away in the over-filled museum of social follies.

The recommendation of President Taft that all Government employees should be pensioned, which was met with so much thoughtless ap-

proval, for one reason is right, because it points directly to the half-short-sighted system of Civil Service wrong. Were it not for this reform, so-called, our government service would not be crippled by aged inefficiency, nor the contemplated pension change required. This doctrine of "Civil Service Reform," preached at banquets, in and out of season, is right. Its righteousness, however, is largely due to the fact that it has opened the doors of reason, leading on to what is partly right, and thence on again to right complete.

Agents of government upon whom duties are imposed, should be selected from a class whose peculiar training fits them to perform the particular services required. "Let the shoemaker stick to his last" principle should dominate all appointments to public office, when practical. This theory is not new, on the contrary, it is applied in many instances in the management of government affairs. Lawyers, only, by law are eligible for some public places; physicians, to others, and engineers, barbers, etc., etc., are by law made the only persons who may be selected to labor for the state in specified capacities.

As physical vegetation is influenced by the soil at its root, and its better attributes influenced by the sunshine and warmth of its surroundings,

so also does man take on these habits of life which naturally result from his physical surroundings and his finer characteristics, such as pity, love and charity, from the sweet comfort of noble thoughts. Upon this natural philosophy, then, let us create the man to whom should be intrusted the duties which invite honesty, pity and charity. By their daily lives, and by the character of their constant thoughts, who of all men are more fitted and qualified to meet these requirements than the ministers of the church of every creed.

It seems, therefore, that it would have been wise had our law-making body, when creating its institutions of charity, required that its managers should be in part, at least, of this class. By this requirement a triple benefit would result to society; first, the church duties would be interwoven with our government affairs; second, the unfortunates of society would be managed upon religious standards of conscience, and third, graft of public funds flowing through these channels on its errand of mercy, would hardly be expected. Under such a management, our humane institutions might approach, our full conception of home for those whom society must care for in this way—depraved political gratitude would not be the price paid for the necessities of life

used by the inmates, and the devilish separations of the aged husband, and wife would not be tolerated, neither would the heart-wrecking system of child adoptions.

The human heart that is crushed by adversity has still the spark of happiness left. To ignite this, so that its rays shall lighten up the path of declining years, a gentle hand is required, and none have it more softly developed than that class of man whose daily life keeps him in constant practice, concerning these things. Let us make a law then predicated upon these humane lines in which the ministers of every church of God shall be a part of the machinery for collecting and distributing the needs of society. Most lawyers are state officers by appointment as notaries, so also should all ministers be Guardians of Protection.

All providing for, the granting of, and distributing protection, should be under one responsible head and the license of all good, bad and fraudulent institutions absolutely prohibited by law.

Large donations as well as benevolent undertakings of every nature, should fall into this one great comprehensive system. Details of taxation, and considerations for public benefactors, all are easy of conception, time alone being re-

quired to perfect them. The state has now in operation a much similar system in the health department and that which it does to prevent disease, surely ought to be tried as a cure.

In conclusion then, the proposed system should comprehend, when perfected in detail, conservation of home and family life for all injured labor, a classification of humane institutions, and a just, equitable and righteous award to all afflicted members of society as compensation. If the great and mighty oak finds it a duty to foster the rank weeds under the protection of its shading wings, society should also perform a like duty for the fallen of its whole.

Contradict the logic of this reasoning, if you must, dispute the merits of the theory, if you can, but whatsoever you do, do not quibble about the detail and thus cover and smother this great moral subject with argument more appropriate for lesser things. This monstrous wrong to be righted, and the hard rooted custom to be overcome in so doing, will furnish intellectual reflection enough for any mind, and entertainment enough for the most pointed concentration. Help is wanted, not hindrance.

CHAPTER X.

INEFFICIENCY OF PROPOSED LAWS

"What to ourselves in passion we propose,
The passion ending, doth the purpose lose."
—*Shakespeare.*

Before any attempt is made to consider or criticize the laws that have been passed, or the laws that are proposed in the nature of Employers' Liability Bills or Workmens' Compensation Acts, much serious thought should be given to the great general attack upon invested capital from every side. Public Utility Bills, Inter-State Commerce Laws, laws regulating rates on Railroads, the Government tax against all corporations, actual physical valuation of properties, dis-integrating of large combinations of capital, vulgarly called "Trust Busting," and numerous other kindred legal assaults against Capital, must first be considered.

The purpose and aim of the Government, not only of the various States, but of the Federal Government as well, contemplates and intends to minimize the earning capacity of invested capital by these processes. It must be apparent to any casual thinker that necessarily, all these attacks

against corporations must reduce the capacity or ability to meet any extra burden on their part which may be placed upon them, with Employers' Liability Bills or Workmens' Compensation Acts.

What can be more absurd then, than after getting the earning capacity of invested capital down to a minimum, to burden it with a greater expense. This must be taken into consideration if any economic element is going to enter into any new proposed laws regulating the relations between Capital and Labor. Laws so far passed doubtless have reduced the gross income of invested capital in the United States seriously; and the laws proposed in the various states of the Union, and in the Federal Government will, if passed, at least double or treble these losses to the gross earnings of the institutions attacked.

The Employers' Liability Bills and the Workmens' Compensation Acts already passed and proposed, are blows at the other end of invested capital, and contemplate and intend nothing else. Not a law so far enacted which has in view a relief for the working classes, strikes at any other institution other than invested capital, and none of the promoters of these so-called remedial laws seems to see any other method. Money is their only goal and invested capital their only enemy.

Most every state in the Union has, by constitutional changes or by legislative act, at-

tempted to correct the abuses growing out of the relations between capital and labor, and in every instance hopeless failure has been their reward. President Gompers of the "Federation of Labor" seems to believe that some of the states have worked out a final solution of this subject, and thus favors the Colorado Law. Nothing is further from a true solution of this difficult subject. The fact is, that all legislative and constitutional changes so far set in motion, are mere patch-work-crazy-quilt-follies, and the whole scheme rests upon a false assumption advocated by Labor itself.

In his annual report, Mr. Gompers says, "Organized workers are thoroughly aroused"—upon this matter, and that "Industry must bear the financial burdens of accidents to the workman as it does to machinery or other property." This position has two glaring objections. The first and least objection to this theory is that this places human life and human flesh in a class with iron, steel, leather and other inanimate values, also classifies man with the horse and mule, to be resupplied for dollars and cents when loss occurs. Nothing more degrading can be contemplated, and no premises can be more ridiculous upon which to base a claim.

The second difficulty with this proposition is one which more seriously concerns society as a

whole(and his whole annual report and for that matter, the whole of the State Legislators, up to date,) evidently have overlooked this, that is, after you have placed a value upon this mangled flesh machine, and the price has been paid, society gets the remnant and society has it to maintain. The broken iron machine finds a resting place on the dump, the human relic is dumped into society and becomes a limping and bleeding charge to the end.

The lathe, milling machine, saw, belts, horses and mules, when worn and useless receive no compensation in full, to be quickly lost or squandered, neither do they cost society a farthing as a wreck. The Gompers' human flesh property, however, takes his cash value from his owner and in time, has his cash taken from him, and thus the ocean of society will always have upon its bosom, a large number of drifting human derelicts distressing at the best.

Now we have a proposition on the one hand, of regulating the rates or income of large combinations of capital and, on the other hand, a proposition of increasing tremendously the gross expenses of their maintenance. It all resolves itself into this one plain proposition, you are asked by society, in its agitated conditon, to regulate and close up the earning capacity of com-

binations of capital at the incoming end of its money drawer, and to liberally tap it at the other.

This brings us to a conclusion that by restricting so far as possible and regulating the rates and income of large capital at one end, and by exacting from them a large outlay at the other, you grant an implied license to them, to levy an insidious tax upon society for the purposes of making both ends meet.

No sane man has yet figured out how a railroad that has had its earning capacity reduced to a minimum, can maintain Old Age Infirmaries, Cripple's Retreats and Workmens' Orphan Asylums under modern conception of Workmens' Compensation tonic, and maintain a required efficiency at the same time, without a sovereign license to tax society. You cannot expect to find cash in a till, if you shut off the intake at one end, and tap it dry at the other. If you impose the public duty to distribute gratuities, or charity, upon corporations by compensation acts, etc., they will take the public prerogative of sovereign power to collect an insidious tax as an offset.

As I view this matter, going into detail, the proposed Utility Legislation contemplates, (*a*) regulating the rates of money to be received by corporations (assuming, of course, that they are now too high), thus seeking to reduce their in-

income; (*b*) regulating or preventing so-called watering of stocks, another attempt to destroy their income; (*c*) to correct and remedy all inefficiencies in the service, again reducing the net income; and (*d*) inviting, as a matter of course, extensive and unlimited efforts to prevent expenditures from the three other sources, again reducing the net income—and so on through all the public legislation affecting capital. The purpose of it all can be nothing less than to prevent the present income of the corporations affected by the bills or laws proposed.

Removing the defense heretofore existing, "Hazard of occupation"—removing the defense, "negligence of fellow-servant"—and removing the defense heretofore existing of "contributory negligence," separately and as a whole, again reduces tremendously the net earnings of these corporations.

Thus it can be seen that the new proposed legislation, taken as a whole, contemplates only one thing, a tremendous reduction of the gross income of invested capital, and a tremendous increase of the gross maintenance. How then, and by whom, is this changed condition and expense going to be met?

These difficulties are not the only ones that are involved in this proposed legislation. There

are many others which are even more appalling when carefully considered. With the "hazard of occupation" removed as a defense, a traveling man whose duty calls him to take passage on a train, if injured, may (*a*) sue his employer, (*b*) may sue the railroad, and (*c*) may also sue the employee of the railroad who caused the injury by negligence. His employer may sue the railroad in contribution and also may sue the railroad for loss of services of his employee. His employer may, with the railroad, jointly sue the agent or employee of the railroad who actually was negligent, and actually caused the injury. Where would the end of litigation be in any ordinary case, if the law which is hoped for, becomes a law, unless some careful consideration be given to questions of this character.

Again under our present law of contribution, every workman who actually is negligent, resulting in injury to his fellow workman, or to any other person, would be liable in damages if sued directly. Again he can be made co-defendant in any suit brought against his employer, or he can be sued directly by his employer under the law of contribution, as being the tort-feasor actually responsible for the injury.

Again, this proposed legislation must not be defeated by a constitutional defect, known as

class legislation. Therefore, all employers of labor necessarily would be affected. Farmers, small manufacturers and traders of every description employing labor would be included. In ninety per cent of the judgments obtained under the proposed law, the cripple would have the business and the owner would be bankrupt. The farmer's hired man would own the farm and the mechanic would own the small manufacturing establishment. There is nothing but danger and litigation in view, if the laws proposed and hoped for, become laws in fact.

If the laboring class are not legally excused from the hazard of their occupation, from the negligence of their fellow employees and from the defense of contributory negligence, the law will not approach what they seek or desire.

The whole subject then resolves itself into tremendous complications, would result in absurd and ridiculous conditions, and can never be adjusted or patched in any way now proposed. The large corporations would be compelled to insidiously tax society to meet their increased expenses, or society would suffer by the loss of efficiency in the service. If there was a loss of efficiency there would be more complaints, greater damages to pay, and so on, and so forth to a final absurdity.

The judgment obtained by labor for injuries received after being largely wasted in litigation, and the remainder being received long after it was needed, would be quickly squandered. Society once having paid the tax to the insidious corporate tax collector, would again be called upon to maintain and support the cripple at public expense. Labor would find it more difficult to obtain the price for its services with these extra burdens placed upon capital, and so far as it appears to me, the whole proposition patched and handled in any way possible, so far proposed, would become a perfect jumble of legal monstrosities.

Labor feels the distress which an antiquated law imposes upon it. Capital forsees an economic wrong in the laws proposed. Nothing can be accomplished along this line except a drawing apart of the two conflicting interests and an untiring belligerency on the part of both toward each other.

Railroads and other invested capital should not have delegated to them a public sovereign duty, which carries with it a public perogative license to levy taxes to maintain these public duties. The whole scheme of making employers of labor perform in part the charitable duties of society, that is maintaining in part or in whole, the afflic-

ted workman, is to my mind one of the most ridiculous efforts at modern patch-work legislation ever attempted. The whole question must be considered from a new point of view and based upon modern society, as it is, instead of attempting to correct old, worn out and useless laws of ancient society as it was. These antiquated rules of social conduct, once the key to social happiness, now under the changed conditions of modern society, work nothing but public distress.

To solve this problem, and solve it right, old laws born out of old customs and environments, should have no place. New laws suggested by the new customs and modern up-to-date environments, should be the foundation upon which this difficulty should rest. The holy trinity of "assumed risk," "contributory negligence" and "fellow servant" negligence, as well as the employer's responsibility now advocated as a new feature, have no place in a new theory or proposed remedy.

The soldier, post office clerk, policeman, fireman, and now the school teacher, etc., deserve a pension no more, and no less, than any other employee doing honest duty for society. The occupation of a government clerk, soldier, teacher, etc., can be as easily dispensed with by society as any other class. If one class is entitled to state assistance when incapacitated, so is the other.

It is this unjust and absurd condition which prompts the present agitation known as Employers' Liability or Workmens' Compensation Acts, and the subject will never be settled until it is settled right.

By rights, the employer of capital should not be an insurer, neither should laborers insure themselves. Neither is working for the other in a broad sense. On the contrary, both are working for themselves, incidently, but wholly and at all times, for society. Every blow and every thought emanating from their joint efforts, has as an ultimate result, the general welfare, therefore, by the general public they should be encouraged and protected to the end. Labor, when engaged for the benefit of the whole, should not suffer, as now; neither should capital suffer as proposed.

Our government now rewards its war laborers and many other of its employees with bountiful pensions—municipal associations are fast doing likewise, but in no instance are any of these benefitted, more deserving than those who perform honest duty for society in other fields of governmental necessity.

The first class have but earned this reward by services required by society—can less be said for the second class? The pensioners of today have

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that he voted at the last bi-annual National Election, otherwise the tax should be paid by any voter failing to vote as suggested, unless good and sufficient cause could be shown for his inability to perform this National duty,

The law, in substance, which is herein proposed is as follows: That a universal "Workmens' Compensation Act be passed by Congress, providing compensation to injured workmen growing out of all kinds of occupations, that is, injuries arising out of and in the due course of any workman's employment (and if considered advisable, for sickness), to be paid through the Post Office Department of the United States Government (safeguarded with such restrictions as will prevent fraud), in the form of weekly or bi-weekly payments during the period of inability to perform their ordinary duties; and of a further payment in the nature of a pension to all dependents of such injured workmen, meaning widows during widowhood, dependent children under a stated age, and parents or grand-parents if dependent upon the injured workman, where the injury results in death.

Such a law should repeal and make inoperative the application of all rules of common law or statutory law now in force, regulating the relations between Master and Servant so far as

it affects directly the working classes; and their rights, if any, in a suit at law against the employer, be discontinued.

If any wrong on the part of an employer results in an injury to a workman, and the elements of malice or a wanton disregard of the safety of the employee enters into the accident, provision should be made that under these circumstances, the offense becomes a crime or misdemeanor and punished as such by fine or imprisonment.

Is the law proposed, the method of taxation, and the machinery assessing, collecting and disbursing the fund, constitutional, is the only questions left to consider.

The Constitution of the United States specifies some of the purposes for which taxes may be laid and among them is, that a tax may be laid "for the general welfare of the United States." Another specification of the Constitution is "to form a more perfect union, establish justice and insure domestic tranquility." The power to tax for the general welfare is, to accomplish one of the main purposes for which the Constitution was adopted.

The interpretation of this particular feature of our Constitution has been enunciated by many writers and courts, a partial list of which is herein set forth.

"To lay taxes to provide for the general welfare of the United States is to lay taxes for the purpose of providing for the general welfare. For the laying of taxes is the power, and the general welfare, the purpose, for which the power is to be exercised. Congress are not to lay taxes ad libitum for any purpose they please, but only to pay the debts or provide for the welfare of the Union. In like manner, they are not to do anything they please to provide for the general welfare, but only to lay taxes for that purpose. To consider the latter phrase not as describing the purpose of the first, but as giving a distinct and independent power to do any act they please which might be for the good of the Union, would render all the preceeding and subsequent enumerations of power completely useless."—*Thomas Jefferson.*

"The same opinion has been maintained at different and distant times by many eminent statesmen. It was avowed and apparently acquiesced in, in the stated (State?) conventions called to ratify the Constitution; and it has been, on various occasions, adopted by Congress, and may fairly be deemed that which the deliberate sense of a majority of the Nation has at all times supported. This, too, seems to be the construction maintained by the Supreme Court of the United States."—*Justice Story.*

"It is, therefore, of necessity left to the discretion of the National Legislature to pronounce the objects which concern the general welfare and for which, under that description, an appropriation of money is requisite and proper. And there seems no room for a doubt that, whatever concerns the general interests of learning, of agriculture, of manufacture, and of commerce is within the sphere of the national councils, so far as regards an application of money."—*Hamilton.*

"Since as pointed out in all the decisions referred to the taxing power conferred by the Constitution knows no limits except those expressly stated in that instrument, it must follow, if a tax be within the lawful power, the exertion of that power may not be judicially restrained because of the results to arise from its exercise."—*McCray vs. United States* (*195 U. S., 27 at 59*).

"If the right to impose the tax exists, it is a right which in its nature acknowledges no limits." —*Weston vs. City Council of Charleston* (*27 U. S.* (*2 Peters*), *449, 446*).

The term "general welfare" in the Constitution does not mean to apply to the people of any individual state, neither does it mean the people of the United States living in territories other than in the individual states. The "general welfare" means the welfare of all the people of all

the states and of the United States. Hamilton defines the term "general welfare" to mean that "whatever concerns the general interests of learning, of agriculture, of manufacture and of Commerce are within the sphere of the National Council."

So far as is known the Federal Courts have never construed the term "general welfare," but have frequently, in its decisions, indicated by inference what the term means, and in no instance can it be inferred that the term means anything else, than all the people of the United States. The term then, in our Constitution which provides that Congress may levy and collect a tax to pay the debts—and provide for the general welfare, practically gives Congress an unlimited power over the subject matter under discussion.

There can be no question that the "General Welfare" of the United States at the present time requires a definite, harmonious and universal "Workmens' Compensation" act. It is safe to assume that no institution now sustained by law is causing so much discontent, and disturbance, and threatening our peace and tranquility, or that is working our greater injustice than the doctrine of Common Law regulating the relations between man and money. Congress has within its own initiative power the right to determine whether

or not any reasonable question comes within the term "general welfare" or whether a settlement of it would insure peace and tranquility. Having once settled this question, Congress, by the Constitution, has a right to tax to maintain and provide for the expenses incurred looking toward this end.

It is claimed herein that the truth resulting in justice to all concerned, mentioned and described in the first chapter of this book, has been arrived at. The right of Society to change its laws has been fully discussed. The injustice to the greatest number of our people has fully been considered, and a remedy in general proposed. It has been shown that a general law instead of many inconsistent rules of action is advisable. The remedy needed is apparent. What more can be said concerning this subject except the drafting of a law in detail to meet this great and active question?

Again, as a final word concerning this matter, if the government of the United States is morally supported in its pension system for its own agents, Society the master of the government, should be morally supported in the proposed law herein set forth. The general welfare suggests it, peace and tranquility of Society invite it, common justice requires it, and the great moral teach-

ings of ordinary truthful common sense should enact it. No patchwork legislation state-wise, can ever result in an equitable solution of this problem, nor can the government shirk its responsibility by delegating its prerogative of taxation, and its duty of maintaining its afflicted, upon invested capital. A great wrong has been and is being perpetrated upon honest labor; it should be righted.